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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 492

GENERAL GAS AND ELECTRIC CORPORATION,
PETITIONER,

vs.

COMMISSIONER OF INTERNAL REVENUE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED DECEMBER 1, 1938.

CERTIORARI GRANTED JANUARY 3, 1939.

SUPREME COURT OF THE UNITED STATES

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

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[fol. 1]

BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 52,639

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DOCKET ENTRIES

Appearances:

For Taxpayer: Francis J. Sweeney, Esq.
For Comm'r: Chester Gwinn, Esq.

Transferred to Mr. Disney 6/30/36

1931.

Feb. 9. Petition received and filed. Taxpayer notified. (Fee paid.)
" 9. Copy of Petition served on General Counsel.
Mar. 30. Answer filed by General Counsel.
Apr. 3. Copy of answer served on taxpayer. General Counsel.
" 25. Reply to answer filed by taxpayer. March 27, 1931 copy served.

1932.

Sept. 21. Motion for a continuance and to consolidate with dockets 49,079, 49,080, 52,679, 52,680 filed by taxpayer. September 22, 1932 granted and continued to Spring Term of 1933.

1934.

Dec. 8. Hearing set January 28, 1935.

[fol. 2]

1935.

Jan. 10. Stipulation of facts filed.
" 28. Hearing had before Mr. Seawell on merits. On motion of parties Docket 59,470 consolidated

with 59,469, 52, 639, 52,680 and 49,079. Submitted on stipulation of facts heretofore filed. Petitioner's brief due in 60 days (March 29, 1935). Respondent's brief due 30 days thereafter. Petitioner's reply due in 15 days.

Feb. 1. Transcript of hearing of January 28, 1935 filed.

Mar. 29. Brief filed by taxpayer. March 29, 1935 copy served.

Apr. 24. Brief filed by General Counsel.

May 9. Reply brief filed by taxpayer. May 10, 1935 copy served.

1937.

June 3. Memorandum opinion rendered, Richard L. Disney, Division 4. Decision will be entered under Rule 50.

Aug. 13. Motion for redetermination filed by General Counsel.

" 16. Hearing set September 8, 1937 on motion. (Settlement.)

" 20. Consent to settlement filed by taxpayer.

" 24. Decision entered, Bolon B. Turner, Division 8.

Nov. 20. Petition for review by United Circuit Court of Appeals (Second) with assignments of error filed by taxpayer.

" 20. Proof of service filed by taxpayer.

" 20. Praecipe with proof of service thereon filed.

[fol. 3] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket No. 52,639

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

PETITION—Filed February 9, 1931

General Gas & Electric Corporation hereby petitions for a redetermination of an asserted deficiency and alleges as follows:

I. The Commissioner of Internal Revenue, the respondent herein, by letter dated December 13, 1930, and bearing the

bureau reference or symbols IT:AR:A-8-60D:JES notified your petitioner by registered mail, of a deficiency in income taxes with respect to the income tax imposed by the Revenue Act of 1926.

II. Your petitioner was at all times hereinafter mentioned, a corporation duly organized and existing under the laws of the State of Delaware and was engaged in the business of holding securities.

III. Upon information and belief the notice of deficiency, a copy of which is attached hereto, made a part hereof as [fol. 4] though here set forth in full and marked Exhibit "A," was mailed to your petitioner on December 13, 1930.

IV. The taxes in controversy are income taxes for the fiscal period beginning January 1, 1926, and ending December 31, 1926, in the amount of $163,615.76.

V. The respondent's determination of income taxes set forth in said deficiency letter is based on the following errors:

A. That the time within which the respondent might lawfully determine, assess and/or collect a deficiency in federal income taxes for the aforesaid fiscal period, has expired, with respect to your petitioner.

B. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by failing to consolidate the taxable net incomes of your petitioner and its affiliated taxpayers, enumerated in Exhibit "B" attached hereto and made a part hereof as though here set forth in full for the period therein stated.

C. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by failing to consolidate the accounts of your petitioner with the accounts of the taxpayers engaged in related trades or businesses, owned or controlled directly or indirectly by the same interests, as more fully appears [fol. 5] from Exhibit "C" attached hereto and made a part hereof as though here set forth in full.

D. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by adding to or failing to deduct from the

taxable net incomes of its affiliated taxpayers, the following items:

Item	Name of Affiliated Taxpayer	Description of Item

The within assignments of error are set forth on the next two succeeding pages.

The term "affiliated taxpayers" when used herein is intended to, and shall also embrace the taxpayers engaged in related trades or businesses enumerated in "Exhibit 'C'" as more fully appears from paragraph V. C. as well as the taxpayers enumerated in "Exhibit 'B'."

Item	Name of Affiliated Taxpayer	Description of Item	
1	The General Finance Corporation	Profit on sale of stocks and bonds	$5,080.00
2	Saylorsburg Light & Power Co	Depreciation	1,537.02
3	Reading Transit Company	Taxes	42,958.94
4	Reading Transit Company	Depreciation	82,327.43
5	Oley Valley Railway Company	Taxes	962.38
6	Oley Valley Railway Company	Depreciation	12,302.13
7	Hamburg Gas & Electric Company	Taxes	11,412.90
8	Hamburg Gas & Electric Company	Amortization	75.24
9	Hamburg Gas & Electric Company	Depreciation	8,793.03
10	Topton Electric Light & Power Co	Taxes	2,950.00
11	Weisenberg Township Electric Light and Power Company	Taxes	85.00

[fol. 6]

12	Ortanna Electric Light & Power Co	Taxes	264.98
13	Ortanna Electric Light & Power Co	Depreciation	2,505.80
14	Birdsboro Electric Company	Taxes	1,775.00
15	French Creek Electric Company	Loss-Prior Period	1,498.10
16	Bernville Light, Heat & Power Co	Taxes	439.23
17	Bernville Light, Heat & Power Co	Depreciation	1,285.01
18	Berks-Lehigh Electric Company	Taxes	387.12
19	Berks-Lehigh Electric Company	Depreciation	1,552.72
20	Newtown Gas Company	Taxes	861.68
21	New Jersey Power and Light Company	Bad Debts	2,925.00
22	New Jersey Power and Light Company	Taxes	35,101.22
23	New Jersey Power and Light Company	Depreciation	223,965.89
24	New Jersey Power and Light Company	Obsolescence	89,314.53
25	Washington Gas Company	Depreciation	2,814.47
26	Washington Gas Company	Bad Debts	164.38
27	Washington Gas Company	Discount on Bonds	5,817.03
28	Washington Gas Company	Miscellaneous Adjustments	336.77
29	Washington Gas Company	Taxes	293.68
30	Boonton Gas Light & Improvement Co.	Depreciation	1,374.22
31	Binghamton Light, Ht. & Pr. Co.	Taxes	46,281.73
32	Binghamton Light, Ht. & Pr. Co.	Loss on sale of assets	17,827.05
33	Binghamton Light, Ht. & Pr. Co.	Depreciation	149,540.93
34	Northern Pennsylvania Power Company	Taxes	33,558.36
35	Northern Pennsylvania Power Company	Amortization	115,422.19
36	Northern Pennsylvania Power Company	Loss on sale of capital assets	2,462.52

Item	Name of Affiliated Taxpayer	Description of Item	
37	Northern Pennsylvania Power Company	Obsolescence	$73,609.39
38	Northern Pennsylvania Power Company	Depreciation	83,039.84
39	Sayre Electric Company	Depreciation	8,798.09
[fol. 7]			
40	Sayre Electric Company	Taxes	3,964.35
41	Susquehanna Light and Power Company	Taxes	2,144.61
42	Broad River Power Company	Amortization	1,107.79
43	Broad River Power Company	Taxes	16,206.74
44	Broad River Power Company	Obsolescence	44,528.58
45	Broad River Power Company and/or Columbia Rwy. Gas & Elec. Co.	Depreciation	380,951.44
46	Columbia Railway Gas & Electric Co.	Loss, property sold and abandoned	20,595.66
47	Columbia Railway Gas & Electric Co.	Obsolescence	113,960.34
48	Blue Ridge Power Company	Depreciation	89,146.97
49	Blue Ridge Power Company	Amortization	12,039.58
50	Blue Ridge Power Company	Miscellaneous unallocated items	5,483.53
51	Blue Ridge Power Company	Net Loss 4 mos. ended 4/30/26	62,762.17
52	Blue Ridge Power Company	Taxes	79.00
53	Manufacturers Power Company	Depreciation	49,206.54
54	Manufacturers Power Company	Amortization	7,021.55
55	Manufacturers Power Company	Net Loss 4 mos. ended 4/30/26	22,267.78
56	Melrose Power & Manufacturing Co.	Depreciation	1,726.71
57	Melrose Power & Manufacturing Co.	Taxes	4,438.32
58	North Carolina Public Service Co.	Injuries and Damages	2,400 00
59	North Carolina Public Service Co.	Taxes	38,974.84
60	North Carolina Public Service Co.	Loss on sale of assets	10,805.08
61	North Carolina Public Service Co.	Bad Debts	8,904.94
62	North Carolina Public Service Co.	Amortization	190,306.42
63	Winston-Salem Gas Company	Net Loss	1,373.78
64	Winston-Salem Gas Company	Period Adjustment	974.59
65	Winston-Salem Gas Company	Taxes	3,785.80
66	North Penn Power Company	Taxes	700.17

[fol. 8] E. That the respondent erroneously and illegally increased your petitioner's taxable net income for the aforesaid fiscal period by adding thereto or failing to deduct therefrom as follows:

1. Profit on sale of stock of affiliated companies $1,350.00
2. Expenses 7,500.00
3. Profit on sale of subsidiary companies' bonds 21,900.00

F. That the respondent erroneously and illegally determined, computed, allocated, charged and/or credited the taxes paid by or determined against and/or assessed against your petitioner and/or its affiliated taxpayers and/or taxpayers engaged in related trades or businesses.

VI. Facts upon which your petitioner relies as sustaining the aforesaid assignments of error are as follows:

A. That your petitioner filed its federal income tax return for the calendar year 1926 on June 15, 1927.

B. That your petitioner was affiliated with the taxpayers enumerated in Exhibit "B" for the periods therein stated.

1. Your petitioner and/or its affiliated taxpayers owned at least 95% of the stock, within the meaning and contemplation of the law, of the taxpayers enumerated in said Exhibit [fol. 9] "B" for the periods therein stated.

2. That your petitioner and said taxpayers enumerated in Exhibit "B" filed a consolidated income tax return for the calendar year 1926.

C. That your petitioner and the taxpayers, enumerated in Exhibit "C" attached hereto and made a part hereof as though here set forth in full, were owned or controlled, directly or indirectly by the same interests.

1. That your petitioner and the taxpayers enumerated in Exhibit "C," were at all times herein mentioned, engaged in a related trade or business, i. e., ownership and operation of public utilities.

2. That your petitioner and the taxpayers enumerated in Exhibit "C" filed a consolidated return for the calendar year 1926.

3. That the accounts of your petitioner and of said taxpayers enumerated in Exhibit "C" are so related that it is necessary, in order to make an accurate distribution or apportionment of gains, profits, income, deductions or capital between or among them, to consolidate their accounts.

D. Affiliated taxpayers—Facts as to erroneous and illegal increases in taxable net incomes of affiliated taxpayers by the respondent:

[fol. 10] 1. General Finance Corporation—The respondent has erroneously and illegally included in consolidated taxable net income, profit on sale of subsidiary companies' stock in the amount of $5,080.00. This does not constitute taxable net income and it was erroneous and illegal to include it as such.

2. Saylorsburg Light and Power Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount

of $2,775.95 as a fair and reasonable allowance for depreciation.

3. Reading Transit Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $40,005.31 of which only $2,953.63 was allowed by the respondent.

4. Reading Transit Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $184,426.00 as a fair and reasonable allowance for depreciation.

5. Oley Valley Railway Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $730.25 of which only $232.13 was allowed by the respondent.

[fol. 11] 6. Oley Valley Railway Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $20,000.00 as a fair and reasonable allowance for depreciation.

7. Hamburg Gas and Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $2,635.07 of which only $8,777.83 was allowed by the respondent.

8. Hamburg Gas and Electric Company—Said affiliated taxpayer incurred during 1926 interest and/or ordinary and necessary expense in the nature of amortization amounting to $846.72 of which only $771.48 was allowed by the respondent.

9. Hamburg Gas and Electric Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $16,131.40 as a fair and reasonable allowance for depreciation.

10. Topton Electric Light and Power Company—Said affiliated taxpayer paid and incurred during calendar year 1926 taxes properly deductible in determining taxable net

income amounting to $823.99 of which only $2,126.01 was allowed by the respondent.

[fol. 12] 11. Weisenberg Township Electric Light and Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $129.99 of which only $44.99 was allowed by the respondent.

12. Ortanna Electric Light and Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $249.69 of which only $15.29 was allowed by the respondent.

13. Ortanna Electric Light and Power Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $2,505.80 as a fair and reasonable allowance for depreciation.

14. Birdsboro Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $449.15 of which only $1,325.85 was allowed by the respondent.

15. French Creek Electric Company—That for the fiscal period beginning January 1, 1926, and ending May 31, 1926, said taxpayer incurred a loss of $1,498.10 which the respondent failed to allow as a deduction in determining taxable net [fol. 13] income for the fiscal period beginning June 1, 1926, and ending December 31, 1926.

16. Bernville Light, Heat and Power Company—Said affiliated taxpayer paid and incurred during the fiscal period beginning July 1, 1926, and ending December 31, 1926, taxes properly deductible in determining taxable net income amounting to $153.98 of which only $285.25 was allowed by the respondent.

17. Bernville Light, Heat and Power Company—That the depreciable property of the said taxpayer for the period beginning July 1, 1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $1,285.01 as a fair and reasonable allowance for depreciation.

18. Berks-Lehigh Electric Company—Said affiliated taxpayer paid and incurred during the period beginning July

1, 1926, and ending December 31, 1926, taxes properly deductible in determining taxable net income amounting to $33.87 of which only $353.25 was allowed by the respondent.

19. Berks-Lehigh Electric Company—That the depreciable property of said taxpayer for the period beginning July 1, 1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $1,552.72 as a fair and reasonable allowance for depreciation.

[fol. 14] 20. Newton Gas Company—Said affiliated taxpayer paid and incurred during the period beginning January 1, 1926, and ending November 30, 1926, taxes properly deductible in determining taxable net income amounting to $1,662.51 of which only $800.83 was allowed by the respondent.

21. New Jersey Power and Light Company—That during the calendar year 1926 said taxpayer charged operating expenses and credited reserve for uncollectible accounts in the amount of $8,425.00. A fair and reasonable allowance for Bad Debts would not be less than this amount.

22. New Jersey Power and Light Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $86,649.41 of which only $51,548.19 was allowed by the respondent.

23. New Jersey Power and Light Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $223,965.89 as a fair and reasonable additional allowance for depreciation.

24. New Jersey Power and Light Company—That the respondent determined that the correct deduction for obso-[fol. 15]lescence sustained during the calendar year 1926 amounted to $127,883.61, that he inadvertently disallowed $89,314.53 of this amount in making his adjustment for depreciation so both the deduction for depreciation and obsolescence was included as a deduction on the return in one figure and in making his adjustment for depreciation he presumed that the entire amount represented a deduction for depreciation.

25. Washington Gas Company—That the depreciable property of said taxpayer for the period beginning January

1, 1926, and ending November 30, 1926, was a sum certain, sufficient to constitute the amount of $2,814.47 as a fair and reasonable allowance for depreciation.

26. Washington Gas Company—That the respondent erroneously and illegally increased taxable net income by adding thereto $164.38 provision for bad debts. A fair and reasonable allowance for Bad Debts would not be less than this amount.

27. Washington Gas Company—That said taxpayer did not realize a taxable profit in the retirement of its bonds at a discount of $5,817.03.

28. Washington Gas Company—That the respondent erroneously and illegally increased taxable net income by adding thereto $336.77 determined to be recovery of bad [fol. 16] debts. Said adjustment was made in order to bring the accounts receivable ledgers in agreement with the accounts receivable control. This item does not constitute taxable net income for the period beginning January 1, 1926, and ending November 30, 1926.

29. Washington Gas Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $960.32 of which only $666.64 was allowed by the respondent.

30. Boonton Gas Light & Improvement Company—That the depreciable property of said taxpayer for the period beginning January 1, 1926, and ending March 31, 1926, was a sum certain, sufficient to constitute the amount of $1,374.22 as a fair and reasonable allowance for depreciation.

31. Binghamton Light, Heat and Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $86,832.79 of which only $40,551.06 was allowed by the respondent.

32. Binghamton Light, Heat and Power Company—That the respondent erroneously and illegally increased taxable net income by disallowing $17,828.05 of a total loss of $44,666.49 on the sale of miscellaneous capital assets.

[fol. 17] 33. Binghamton Light, Heat and Power Company—That the depreciable property of said taxpayer for the

calendar year 1926 was a sum certain, sufficient to constitute the amount of $309,058.27 as a fair and reasonable allowance for depreciation.

34. Northern Pennsylvania Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes properly deductible in determining taxable net income amounting to $10,571.10 of which only $23,987.26 was allowed by the respondent.

35. Northern Pennsylvania Power Company—That said taxpayer incurred during the calendar year 1926 interest expense and/or ordinary and necessary expense by reason of amortization amounting to $115,422.19 which the respondent erroneously and illegally failed to allow.

36. Northern Pennsylvania Power Company—That the respondent erroneously and illegally increased taxable net income by disallowing $2,462.52 of a total loss of $10,616.44 incurred during the calendar year 1926 on the sale of miscellaneous capital assets.

37. Northern Pennsylvania Power Company—Said affiliated taxpayer by reason of abandonment and changes of its operating properties sustained or incurred obsolescence during 1926 amounting to not less than $73,609.39.

[fol. 18] 38. Northern Pennsylvania Power Company—That the depreciable property of said taxpayer for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $123,222.21 as a fair and reasonable allowance for depreciation.

39. Sayre Electric Company—That the depreciable property of said taxpayer for the period beginning January 1, 1926, and ending June 30, 1926, was a sum certain, sufficient to constitute the amount of $17,940.10 as a fair and reasonable allowance for depreciation.

40. Sayre Electric Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $1,628.93 of which only $2,335.00 was allowed by the respondent in determining taxable net income.

41. Susquehanna County Light and Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $1,511.72 of which only $632.89 was allowed by the respondent in determining taxable net income.

42. Broad River Power Company—That said taxpayer incurred during the calendar year 1926 interest and/or ordinary and necessary expense in the nature of amortization amounting to $1,107.79 which the respondent failed to allow in determining taxable net income.

[fol. 19] 43. Broad River Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $182,915.35 of which only $166,708.61 was allowed by the respondent in determining taxable net income.

44. Broad River Power Company—Said taxpayer by reason of abandonments and changes in its operating properties sustained and incurred obsolescence during 1926 amounting to not less than $44,528.58.

45. Broad River Power Company and/or Columbia Railway Gas & Electric Company—That the depreciable property of Broad River Power Company and/or Columbia Railway Gas & Electric Company for the calendar year 1926 was a sum certain, sufficient to constitute the amount of $564,723.26 as a fair and reasonable allowance for depreciation.

46. Columbia Railway Gas and Electric Company—That during the calendar year 1926 said taxpayer sustained or incurred obsolescence amounting to not less than $20,595.66 by reason of abandonment of street cars which the respondent failed to allow as a deduction in determining taxable net income.

47. Columbia Railway Gas and Electric Company—Said taxpayer, by reason of abandonments of street car lines sustained or incurred obsolescence during 1926 amounting [fol. 20] to not less than $113,960.34 which the respondent failed to allow as a deduction in determining taxable net income.

48. Blue Ridge Power Company—That the depreciable property of said taxpayer for the period beginning May 1, 1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $89,146.97 as a fair and reasonable allowance for depreciation.

49. Blue Ridge Power Company—That said taxpayer incurred interest and/or ordinary and necessary expense in

the nature of amortization amounting to $12,039.58 during the period beginning May 1, 1926, and ending December 31, 1926, which the respondent failed to allow as a deduction in determining taxable net income.

50. Blue Ridge Power Company—That the respondent erroneously and illegally increased taxable net income of $5,483.53 by disallowing miscellaneous unallocated items. Upon information and belief the above amount constituted ordinary and necessary expense properly deductible in determining taxable net income for the period beginning May 1, 1926, and ending December 31, 1926.

51. Blue Ridge Power Company—That during the period beginning January 1, 1926, and ending April 30, 1926, said [fol. 21] taxpayer sustained a net loss of $62,762.17. Said net loss is a proper deduction in determining taxable net income for the period beginning May 1, 1926, and ending December 31, 1926.

52. Blue Ridge Power Company—Said affiliated taxpayer paid and incurred during the period beginning May 1, 1926, and ending December 31, 1926, taxes amounting to $16,835.43 of which $16,914.43 was allowed by the respondent in determining taxable net income.

53. Manufacturers Power Company—That the depreciable assets of said taxpayer for the period beginning May 1, 1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $49,206.54 as a fair and reasonable allowance for depreciation.

54. Manufacturers Power Company—That the respondent erroneously and illegally increased taxable net income by adding thereto determined over deduction of amortization of Debt Discount and Expense amounting to $7,021.55. Upon information and belief no such deduction was made on the return as filed.

55. Manufacturers Power Company—That during the period beginning January 1, 1926, and ending April 30, 1926, said taxpayer sustained a net loss of $22,267.78. Said net loss is a proper deduction in determining taxable net [fol. 22] income for the period beginning May 1, 1926, and ending December 31, 1926.

56. Melrose Power Company—That the depreciable property of said taxpayer for the period beginning October 1,

1926, and ending December 31, 1926, was a sum certain, sufficient to constitute the amount of $1,726.71 as a fair and reasonable allowance for depreciation.

57. Melrose Power Company—Said affiliated taxpayer paid and incurred during the period beginning October 1, 1926, and ending December 31, 1926, taxes amounting to $447.00 of which only $3,991.32 was allowed by the respondent in determining taxable net income.

58. North Carolina Public Service Company—That the respondent erroneously and illegally increased taxable net income by adding thereto additions to the reserve for injuries and damages amounting to $2,400.00. Upon information and belief the foregoing amount was not deducted from income on the return as filed.

59. North Carolina Public Service Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $89,785.41 of which only $50,810.57 was allowed by the respondent in determining taxable net income.

[fol. 23] 60. North Carolina Public Service Company—That during the calendar year 1926 said taxpayer sold miscellaneous capital assets and incurred a loss of $10,805.08 on said sale.

61. North Carolina Public Service Company—That in determining taxable net income of said taxpayer for the calendar year 1926 the respondent disallowed bad debts of $8,904.94 in order to place this deduction on the accrual basis. Upon information and belief the deduction for bad debts of this taxpayer for prior years was on an actual bad debts basis.

62. North Carolina Public Service Company—That during the calendar year 1926 said taxpayer incurred interest expense and/or ordinary and necessary expenses in the nature of amortization amounting to $190,306.42 which the respondent failed to allow.

63. Wiston-Salem Gas Company—That the respondent erroneously and illegally increased taxable net income by failing to allow prior year's net loss amounting to $1,373.78.

64. Winston-Salem Gas Company—That the respondent has erroneously and illegally added to income $974.59 repre-

senting proportion of loss due to unaffiliated period. On January 1, 1926, General Gas & Electric Corporation owned [fol. 24] 94.33 percent of Winston-Salem Gas Company's stock and acquired additional shares to bring its holding well over 99 per cent, on January 7, 1926.

65. Winston-Salem Gas Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $11,074.94 of which only $7,289.14 was allowed by the respondent in determining taxable net income.

66. North Penn Power Company—Said affiliated taxpayer paid and incurred during the calendar year 1926 taxes amounting to $5,443.30 of which only $4,743.13 was allowed by the respondent in determining taxable net income.

E. Petitioner's income—Facts as to erroneous and illegal increases in taxable net income of your petitioner by respondent:

1. That the respondent erroneously and illegally increased taxable net income by including therein profit, on the sale of stock of a subsidiary company in the amount of $1,350.00.

2. That the respondent erroneously and illegally increased taxable net income by disallowing a deduction for legal expenses amounting to $7,500.00.

3. That the respondent erroneously and illegally increased taxable net income by including therein profit on the sale of bonds of a subsidiary company amounting to $21,900.00.

[fol. 25] F. That the respondent has erroneously and illegally determined, computed, allocated and assessed the income taxes between your petitioner, its affiliated taxpayers and/or the taxpayers engaged in said related trades or businesses, contrary to the agreement between said taxpayers, the determination of the Commissioner of Internal Revenue, the law and regulations made and provided.

Wherefore, your petitioner prays that your Honorable Board may hear and determine its petition; that the determination of the respondent contained in said deficiency letter be redetermined, set aside, disallowed and disapproved by your Honorable Board, granting unto your petitioner a reduction and disallowance of said respondent's deficiencies

and refunding or crediting the income tax overpayments and overassessments as follows:

Fiscal period beginning January 1, 1926 and ending December 31, 1926	Overassessment and Overpayment	$108,102.47

to your petitioner, its affiliated taxpayers and/or its taxpayers engaged in said related trades or businesses, in accordance with the agreement between said taxpayers, the determination of the Commissioner of Internal Revenue and the Law.

All of which is respectfully submitted.

Francis J. Sweeney, Counsel for the taxpayer.

Dated February 7th, 1931.

[fol. 26] *Duly sworn to by J. F. McKenna. Jurat omitted in printing.*

[fol. 27] EXHIBIT "A" TO PETITION

NP-2-26.

Treasury Department,

Washington

Office of Commissioner of Internal Revenue

Address Reply to Commissioner of Internal Revenue and Refer to

General Gas and Electric Corporation, Room 2406, 61 Broadway, New York, New York.

SIRS:

You are advised that the determination of your tax liability for the year 1926 discloses a deficiency of $90,169.05, as shown in the statement attached.

In accordance with section 274 of the Revenue Act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, if You do not Desire to Petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this [fol. 28] agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; Whereas if no Agreement is Filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully, David Burnet, Commissioner, by M. T. Sherwood, Acting Deputy Commissioner.

Enclosures: Statement. Form 882. Form 870. Schedules 1 to 51, inclusive.

[fol. 29] STATEMENT OF RETURNS EXAMINED AND RESULTING TAX LIABILITY

IT:AR:A-8-60D.
JES.

Returns Examined

Company:	Year	Form
General Gas and Electric Corporation, 61 Broadway	1926	Tentative 1120
New York, New York	1926	Final Consolidated 1120
The General Finance Corporation, 61 Broadway, New York, New York	1926	1122
Birdsboro Electric Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Reading Transit Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Oley Valley Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Neversink Mountain Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Reading Transit Bus Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Norristown Bus Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Oley Valley Quarry Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Womelsdorf and Meyerstown Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122

[fol. 30]

General Gas and Electric Corporation. Company:	Statement Year	Form
Reading and Hamburg Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Newton Gas Company, 30 West Blackwell Street, Dover, New Jersey	1926	1122
The Jersey Corporation, 30 West Blackwell Street, Dover, New Jersey	1926	1122
Susquehanna County Light, Heat & Power Company, 172 Washington Street, Binghamton, New York	1926	1122
Sayre Electric Company, 172 Washington Street, Binghamton, New York	1926	1122
The Waverly Electric Light & Power Company, 172 Washington Street, Binghamton, New York	1926	1122
Broad River Power Company, Arcade Building, Columbia, South Carolina	1926	1122
Columbia Railway, Gas and Electric Company, Arcade Building, Columbia, South Carolina	1926	1122
The Parr Shoals Power Company, Arcade Building, Columbia, South Carolina	1926	1122
Public Service Company of South Carolina, Arcade Building, Columbia, South Carolina	1926	1122
Columbia Gas Light Company, Arcade Building, Columbia, South Carolina	1926	1122

[fol. 31]

North Carolina Public Service, 118 North Elm Street, Greensboro, North Carolina	1926	1122
Salisbury and Spencer Railway Company, 118 North Elm Street, Greensboro, North Carolina	1926	1122
Greensboro Bus Company, 118 North Elm Street, Greensboro, North Carolina	1926	1122
Saluda Manufacturing Company, Arcade Building, Columbia, South Carolina	1926	1122
South Carolina Power Company, Arcade Building, Columbia, South Carolina	1926	1122
Central Carolina Power Company, Arcade Building, Columbia, South Carolina	1926	1122
North Penn Power Company, 172 Washington Street, Binghamton, New York	1926	1122
Northern Pennsylvania Power Company, 172 Washington Street, Binghamton, New York	1926	1122
Hamburg Gas & Electric Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
Topton Electric Light & Power Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122

General Gas and Electric Corporation.

Company:	Year	Statement Form
Weisenberg Township Electric Light & Power Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
[fol. 32]		
Blue Ridge Power Company, Arcade Building, Columbia, South Carolina, 5/1 to 12/31	1926	1122
Berks-Lehigh Electric Company, 12 South 5th Street, Reading, Pennsylvania, 6/30 to 12/31	1926	1122
Ortanna Electric Light and Power Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
The French Creek Electric Company, 16 South 5th Street, Reading, Pennsylvania, 6/1 to 12/31	1926	1122
Melrose Power & Manufacturing Company, Arcade Building, Columbia, South Carolina, 10/1 to 12/31	1926	1122
Manufacturers Power Company, Arcade Building, Columbia, South Carolina, 5/1 to 12/31	1926	1122
Twelfth and Thirteenth Street Railway Company, 12 South 5th Street, Reading, Pennsylvania	1926	1122
New Jersey Power and Light Company, 30 West Blackwell Street, Dover, New Jersey, 12/1 to 12/31	1926	1122
Washington Gas Company, 30 West Blackwell Street, Dover, New Jersey, 12/1 to 12/31	1926	1122
Boonton Gas Light and Improvement Company, 30 West Blackwell Street, Dover, New Jersey, 1/1 to 3/31	1926	1122
New Jersey Power Corporation, 61 Broadway, New York, New York	1926	None
[fol. 33]		
Saylorsburg Light and Power Company, 61 Broadway, New York, New York	1926	None
Wahtawah Company, 61 Broadway, New York, New York	1926	None
Bernville Light Heat and Power Company, 12 South 5th Street, Reading, Pennsylvania, 6/30 to 12/31	1926	1122
Enoree Power Company, 61 Broadway, New York, New York	1926	None
Winston-Salem Gas Company, 61 Broadway, New York, New York, 6/22 to 7/1	1926	None

General Gas and Electric Corporation. Statement.

Company:	Year	Form
Binghamton Light, Heat and Power Company, 172 Washington Street, Binghamton, New York	1926	1122

Tax Liability

General Gas and Electric Corporation, 61 Broadway, New York, New York

Year	Correct Tax Liability	Tax Previously Assessed	Deficiency
1926	$163,615.76	$73,446.71	$90,169.05

Full details of the adjustments producing the above-stated result are contained in the attached schedules 1 to 51, inclusive.

Consents which will expire December 31, 1930, except as extended by the provisions of section 277(b) of the Revenue Act of 1926, are on file for the year 1926.

The entire tax liability has been allocated to the parent (or principal) company in accordance with the agreement as to allocation of tax, signed by each company included in the affiliated group, which is on file in this office.

[fol. 34] General Gas and Electric Corporation. Statement.

Inasmuch as the requirements of section 240 of the Revenue Act of 1926 have not been met the following named corporations have been ruled not affiliated with your company for the periods shown:

Company	Period or Year
New Jersey Power and Light Company	January 1 to November 30, 1926
Washington Gas Company	January 1 to November 30, 1926
Boonton Gas Light and Improvement Company	January 1 to March 31, 1926.
Binghamton Light, Heat & Power Company	1926
Melrose Power & Manufacturing Company	January 1 to September 30, 1926
Winston-Salem Gas Company	January 1 to June 21, 1926
Home Electric Company	1926
Pen Argyl Gas Company	1926

Your protest to the Revenue Agent's Report for the year 1926 has been carefully considered in the determination of the above stated deficiency.

In the determination of your correct tax liability due consideration has been given the grounds set forth in the claims for refund of corporation income tax, for the year 1926, filed by you and your affiliated companies. The claims, listed

below, will be made the subject of separate communications from this Bureau.

Name of company filing claim	Kind	Amount
General Gas and Electric Corporation	Refund	$95,565.42
Reading Transit Company	Refund	21,296.16
Oley Valley Railway Company	Refund	508.01
Saylorsburg Light and Power Company	Refund	201.44
Ortanna Electric Light and Power Company	Refund	407.63
North Carolina Public Service Company	Refund	13,832.19
Hamburg Gas and Electric Company	Refund	5,380.50
Weisenberg Township Electric Light and Power Company	Refund	1,006.12
	Refund	8.45
Bernville Light, Heat and Power Company	Refund	179.28
Birdsboro Electric Company	Refund	1,417.45

[fol. 35] General Gas and Electric Corporation. Statement.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year 1926, the Bureau will be unable to afford you an opportunity under the provisions of article 1211 of Regulations 69 to discuss your case before mailing formal notice of its determination as provided by section 272(a) of the Revenue Act of 1926. It is, therefore, necessary at this time to issue this formal notice of deficiency.

The assessments made under the provisions of section 279(a) of the Revenue Act of 1926 against the following affiliated companies in the amounts indicated will be made the subject of certificates of abatement upon final adjudicating the consolidated tax liability.

Company	Tax	Interest	Total
Berks-Lehigh Electric Company	$104.14	$18.62	$122.76
Ortanna Electric Light & Power Company	220.88	39.49	260.37
Saylorsburg Light and Power Company	3,179.91	568.50	3,748.41
Sayre Electric Company	4,104.77	733.85	4,838.62
Birdsboro Electric Company	858.17	153.42	1,011.59
Hamburg Gas and Electric Company	3,888.14	695.12	4,583.26
Bernville Light, Heat & Power Company	143.42	25.64	169.06
Susquehanna County Light, Heat & Power Company	1,336.29	238.90	1,575.19
Topton Electric Light & Power Company	808.30	144.51	952.81
Weisenberg Township Electric Light and Power Company	15.15	2.71	17.86
Melrose Power & Manufacturing Company	1,032.15	184.52	1,216.65

A carbon copy of this letter has been mailed to H. C. Hopson and Company, 61 Broadway, New York, New York, in accordance with the authorization contained in a power of attorney running to them which is on file in this office.

[fol. 36] General Gas and Electric Corporation

Year ended December 31, 1926

Schedule 1

Net Income

Net income as disclosed by return		$346,671.48
As corrected		355,625.48
Adjustment		$8,954.00
Unallowable deductions and additional income:		
(a) Profit on sale of stock of affiliated Company (New Jersey Power and Light Company)	$1,350.00	
(b) Contributions to capital	104.00	
(c) Organization expenses	7,500.00	
Total adjustment as above		$8,954.00

Schedule 1-A

Explanation of Items Changed

(a) This item represents profit realized from the sale of 2,700 shares of 7% preferred stock of the New Jersey Power and Light Company and the amount is added to taxable income in accordance with the provisions of section 233 of the [fol. 37] Revenue Act of 1926, as interpreted by article 541, Regulations 69.

(b) This item represents the difference between the par value and the amount received from the sale of the preferred stock of the New Jersey and Binghampton corporations which was contributed by the General Gas and Electric Corporation (Maine) and included as an allowable deduction in the consolidated income tax return for the taxable year. Inasmuch as the transaction is intercompany, the amount is eliminated in accordance with the provisions of section 240 of the Revenue Act of 1926, as interpreted by article 636, Regulations 69.

(c) This item represents expenses incurred in connection with the sale of the capital stock of the corporation and the amount is disallowed in accordance with the provisions of sections 215 and 235 of the Revenue Act of 1926, as in-

terpreted by articles 291-294 and 582 of Regulations 69, also see ARR 6048 published in Cumulative Bulletin III-1 and IT 1198 published in Cumulative Bulletin I-1.

[fol. 38] General Gas and Electric Corporation

Year Ended December 31, 1926

General Finance Corporation

Schedule 2

Net Income

Net income as disclosed by return	$(30,560.62)
As corrected	(25,480.62)
Adjustment	$5,080.00

Unallowable deductions and additional income:

(a) Profit on sale of stocks and bonds	$5,080.00

Schedule 2-A

Explanation of Items Changed

(a) This item represents profit realized during the taxable year in connection with the sale of stocks and bonds which was included as nontaxable income in your tax return and the amount is added to taxable income in accordance with the provisions of section 234 of the Revenue Act of 1926, as interpreted by article 541, Regulations 69.

Schedule 3

New Jersey Power Corporation

Net Income

Net loss as disclosed by return	$(15,300.00)
As corrected	No change.

[fol. 39] Schedule 4

Saylorsburg Light and Power Company

Net Income

Net income as disclosed by return	$2,027.43
As corrected	3,630.05
Adjustment	$1,602.62

General Gas and Electric Corporation

Year Ended December 31, 1926

Saylorsburg Light and Power Company

Schedule 4 (Continued)

Unallowable deductions and additional income:

(a) Taxes	$65.60	
(b) Depreciation	1,537.02	
Total adjustment as above		$1,602.62

Schedule 4-A

Explanation of Items Changed

(a) Inasmuch as the taxes paid by the corporation has been taken and allowed as deduction from gross income, in prior years, on the paid basis rather than on the accrual basis this adjustment is found necessary.

[fol. 40] (b) This item represents depreciation deducted from gross income, in your income tax return for the taxable year, in excess of the correct amount allowable as determined by the Bureau in accordance with the provisions of section 234(a)(7) of the Revenue Act of 1926, as interpreted by article 164, Regulations 69. The computation of the amount is as follows:

Plant account at January 1, 1926	$43,091.30
Plant account at December 31, 1926	80,801.71
Average for the year:	
(43,091.30 plus 80,801.71 divided by 2)	$61,946.50
Depreciation rate	2%
Depreciation deducted in return	$2,775.95
Depreciation sustained:	
(61,946.50 times 2%)	1,238.93
Amount disallowed as above	$1,537.02

Schedule 5

Wahtawah Company

Net Income

Net income as diclosed by return	None.
As corrected	No change.

[fol. 41] General Gas and Electric Corporation

Year Ended December 31, 1926

Reading Transit Company

Schedule 6

Net Income

Net income as disclosed by return		$213,956.56
As corrected		383,623.57
Adjustment		$169,667.01
Unallowable deductions and additional income:		
(a) Amortization of additions to leased property	$13,994.34	
(b) Increase in reserve for taxes	73,345.24	
(c) Depreciation	82,327.43	
Total adjustment as above		$169,667.01

Schedule 6-A

Explanation of Items Changed

(a) In the absence of the required information with respect to the terms of the leases under which the expenditures are made the above amount is disallowed in accordance with the provisions of section 214(a)(1) of the Revenue Act of 1926, as interpreted by articles 110 and 561, Regulations 69.

[fol. 42] (b) This amount represents the net increase in the reserve for taxes for the taxable year and is disallowed for the same reason as stated under Item (4), schedule 4-A above.

(c) For explanation of this adjustment see Item (b), schedule 4-A above. The amount is computed as follows:

Plant account January 1, 1926	$6,792,969.42	
Less engineering	14,012.41	
		$6,778,957.01
Plant account December 31, 1926	$6,848,198.14	
Less engineering	14,012.41	
		$6,834,185.73
Depreciation rate		1½%
Depreciation deducted in return		$184,426.00
Depreciation sustained (6,806,571.37 times 1½%)		102,098.57
Amount disallowed as above		$82,327.43

[fol. 43] General Gas and Electric Corporation

Oley Valley Railway Company

Year Ended December 31, 1926

Schedule 7

Net Income

Net income as disclosed by return	$4,723.21
As corrected	(168.51)
Net adjustment	$4,891.72
Unallowable deductions and additional income:	
(a) Net credit to Reserve for Taxes	$2,806.15
Nontaxable income and additional deductions:	
(b) Depreciation underaccrued	7,697.87
Net adjustment as above	$4,891.72

Schedule 7-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

(b) This item represents depreciation sustained during the taxable year, as determined by the Bureau, in excess of the amount taken as a deduction from gross income in your [fol. 44] income tax return and is allowed as a deduction

in accordance with the provisions of section 234(a)(7) of the Revenue Act of 1926 as interpreted by article 164, Regulations 69. The amount is computed as follows:

Average plant account for the year	$513,191.35
Depreciation rate	1½%
Depreciation sustained:	
(513,191.35 times 1½%)	$7,697.87
Amount deducted in return	None.
Amount allowed as above	$7,697.87

General Gas and Electric Corporation

Oley Valley Quarry Company

Year Ended December 31, 1926

Schedule 8

Net Income

Net loss as disclosed by return	$(409.86)
As corrected	(137.36)
Adjustment	$272.50
Unallowable deductions and additional income:	
(a) Net credits--Reserve for taxes	$272.50

Schedule 8-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 45]

Schedule 9

Reading Transit Bus Company

Net Income

Net income as disclosed by return	$(2,615.67)
As corrected	(3,555.14)
Adjustment	$939.47

Nontaxable income and additional deductions:

(a) Net charges to reserve for taxes	$11.33	
(b) Depreciation underaccrued	928.14	
Total adjustment as above		$939.47

Schedule 9-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

(b) For explanation of this adjustment see Item (b), schedule 7-A above. The amount is computed as follows:

[fol. 46] General Gas and Electric Corporation

Year Ended December 31, 1926

Reading Transit Bus Company

Schedule 9-A (Continued)

Explanation of Items Changed (Continued)

Plant account at January 1, 1926	$19,619.71
Plant account at December 31, 1926	$19,814.83
Average for the year:	
(19,619.71 plus 19,814.83 divided by 2)	$19,717.27
Depreciation rate	20%
Depreciation sustained:	
(19,717.27 times 20%)	$3,943.45
Amount deducted in return	3,015.31
Additional amount allowed as above	$928.14

Schedule 10

Neversink Mountain Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

[fol. 47] Schedule 11

Reading and Hamburg Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 12

Twelfth and Thirteenth Street Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 13

Womelsdorf and Meyerstown Railway Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

General Gas and Electric Corporation

Year Ended December 31, 1926

Norristown Bus Company

Schedule 14

Net Income

Net income as disclosed by return	None.
As corrected	No change.

[fol. 48] Schedule 15

Hamburg Gas and Electric Company

Net Income

Net income as disclosed by return	$53,131.77
As corrected	67,835.71
Adjustment	$14,703.94

Unallowable deductions and additional income:

(a) Net credit to reserve for taxes	$11,641.57	
(b) Amortized discount overaccrued	75.24	
(c) Depreciation overaccrued	2,987.13	
Total adjustment as above		$14,703.94

Schedule 15-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

(b) This item represents the overaccrual of amortized discount for the taxable year and is disallowed as a deduction from gross income in accordance with the provisions of section 233 of the Revenue Act of 1926 as interpreted by article 545(3)(a) of Regulations 69.

Amount deducted in return	$846.72
Allowable amount	771.48
Amount disallowed	$75.24

[fol. 49] General Gas and Electric Corporation

Year Ended December 31, 1926

Hamburg Gas and Electric Company

Schedule 15-A (Continued)

Explanation of Items Changed (Continued)

(c) For explanation of this adjustment see Item (b), schedule 4-A above. The amount is computed as follows:

Plant account at January 1, 1926	$352,197.92
Plant account at December 31, 1926	$381,602.83
Average for the year:	
(352,197.92 plus 381,602.83 divided by 2)	$366,900.38
Depreciation rate	2%
Depreciation deducted in return	$10,325.14
Depreciation sustained:	
(366,900.38 times 2%)	7,338.01
Amount disallowed as above	$2,987.13

Schedule 16

Topton Electric Light and Power Company

Net Income

Net income as disclosed by return	$9,983.08
As corrected	12,988.17
Adjustment	$3,005.09

Unallowable deductions and additional income:

(a) Net credit—Reserve for taxes	$3,005.09

[fol. 50]

Schedule 16-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

General Gas and Electric Corporation

Year Ended December 31, 1926

Weisenberg Township Electric Light and Power Company

Schedule 17

Net Income

Net income as disclosed by return	$148.97
As corrected	219.97
Adjustment	$71.00

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$71.00

Schedule 17-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A, above.

[fol. 51]

Schedule 18

Ortanna Electric Light and Power Company

Net Income

Net income as disclosed by return	$3,892.18
As corrected	4,265.26
Adjustment	$373.08

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$373.08

Schedule 18-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

General Gas and Electric Corporation

Year Ended December 31, 1926

Birdsboro Electric Company

Schedule 19

Net Income

Net income as disclosed by return	$14,078.27
As corrected	15,929.62
Adjustment	$1,851.35

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$1,851.35

[fol. 52]

Schedule 19-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

Schedule 20

The French Creek Electric Company

Net Income

Net loss as disclosed by return	$(1,571.76)
As corrected	(42.44)
Net adjustment	$1,529.32

Unallowable deductions and additional income:

(a) Loss prior period	$1,498.10	
(b) Net credit—Reserve for Taxes	31.22	
Net adjustment as above		$1,529.32

Schedule 20-A

Explanation of Items Changed

(a) This item represents the loss sustained by this company from January 1 to June 1, 1926, during which period it was not affiliated with the General Gas and Electric Corporation. It is excluded in determining income of the affiliated companies.

(b) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 53] General Gas and Electric Corporation

Year Ended December 31, 1926

Bernville Light, Heat and Power Company

Schedule 21

Net Income

Net income as disclosed by return	$1,725.67
As corrected	2,276.49
Adjustment	$550.82

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$550.82

Schedule 21-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

Schedule 22

Berks-Lehigh Electric Company

Net Income

Net income as disclosed by return	$919.53
As corrected	1,447.74
Adjustment	$528.21

Unallowable deductions and additional income:

(a) Net credit—Reserve for Taxes	$528.21

[fol. 54]

Schedule 22-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

General Gas and Electric Corporation

Year Ended December 31, 1926

The Jersey Corporation

Schedule 23

Net Income

Net income as disclosed by return	$(13,445.42)
As corrected	(11,523.64)
Net adjustment	$1,921.78

Unallowable deductions and additional income:

(a) Net credit to reserve for taxes	$5,486.83

Nontaxable income and additional deductions:

(b) Depreciation underaccrued	$3,565.05
Net adjustment as above	$1,921.78

[fol. 55] Schedule 23-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

(b) For explanation of this adjustment see Item (b), schedule 7-A above. The amount is computed as follows:

Plant account January 1, 1926	$118,834.44
Plant account December 31, 1926	$118,835.70
Average for the year:	
(118,834.44 plus 118,835.70)	$118,835.07
Depreciation Rate	3%
Depreciation sustained:	
(118,835.07 times 3%)	$3,565.05
Amount deducted in return	-0-
Amount allowed as above	$3,565.05

General Gas and Electric Corporation

Year Ended November 30, 1926

Newton Gas Company

Schedule 24

Net Income

Net income as disclosed by return	$8,616.80
As corrected	9,355.45
Adjustment	$738.65
Unallowable deductions and additional income:	
(a) Net credit—Reserve for Taxes	$738.65

[fol. 56] Schedule 24-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

Schedule 25

New Jersey Power and Light Company

Period December 1 to December 31, 1926

Net Income

Net income as disclosed by return		$162,520.21
As corrected		36,656.19
Net adjustment		$125,864.02
Unallowable deductions and additional income:		
(a) Excessive bad debts	$2,925.00	
(b) Amortized accrued depreciation	2,094.29	
(c) Net increase in reserve for taxes	42,910.97	
(d) Unamortized accrued depreciation	44,027.05	
(e) Depreciation overaccrued	223,965.89	
Total		315,923.20

[fol. 57] General Gas and Electric Corporation

New Jersey Power and Light Company

Period December 1 to December 31, 1926

Schedule 25 (Continued)

Brought forward		$315,923.20
Nontaxable income and additional deductions:		
(f) Obsolescence	$38,569.08	
(g) Period adjustment	403,218.14	
Total		441,787.22
Net adjustment as above		$125,864.02

Schedule 25-A

Explanation of Items Changed

(a) This item represents a portion of the increase in the reserve for bad debts which was taken as a deduction from

gross income in your income tax return for the taxable year. Since an examination of your books of account and records indicates that the actual losses sustained in prior years are relatively small the above amount is held to be excessive and is disallowed in accordance with the provisions of sections [fol. 58] 214 (a) and 234 (a) of the Revenue Act of 1926 as interpreted by articles 151 and 155, Regulations 69. The amount is computed as follows:

Amount added to the reserve and deducted in return	$8425.00
Addition considered reasonable	5,500.00
Amount disallowed as above	$2,925.00

(b) This item represents depreciation accrued in prior years, which was not taken as a deduction in your income tax returns for the years in which sustained, and since your books are kept on the accrual basis the above amount is disallowed as a deduction from gross income for the taxable year in accordance with the provisions of sections 214 (a) and 234 (a) of the Revenue Act of 1926 as interpreted by article 112, Regulations 69.

(c) For explanation of this adjustment see Item (a), Schedule 4-A above.

(d) This item represents the balance of the unamortized depreciation for prior years which was charged off the books and taken as a deduction from gross income in your income tax return for the taxable year and the amount is disallowed in accordance with the provisions of sections 214 (a) and 234 (a) of the Revenue Act of 1926 as interpreted by article 112, Regulations 69.

[fol. 59] General Gas and Electric Corporation

New Jersey Power and Light Company

Period December 1 to December 31, 1926

Schedule 25-A (Continued)

Explanation of Items Changed (Continued)

(e) For explanation of this adjustment see Item (b), schedule 4-A above. The amount is computed as follows:

Plant account January 1, 1926	$6,482,735.67	
Less: Nondepreciable assets	677,235.45	
		$5,805,500.22
Plant account at December 31, 1926	$11,103,348.77	
Less: Nondepreciable assets	677,235.45	
		$10,426,113.32
Average for the year: (5,805,500.22 plus 10,426,113.32 divided by 2)		$8,115,806.77
Depreciation rate		2%
Depreciation deducted in return		$386,282.03
Allowable amount (8,115,806.77 times 2)		162,316.14
Amount disallowed as above		$223,965.89

[fol. 60] (f) This item represents obsolescence sustained on property retired during the taxable year and the amount is allowed in accordance with the provisions of section 214 (a) (8) of the Revenue Act of 1926 as interpreted by article 166, Regulations 69. The amount is computed as follows:

Obsolescence sustained (per books)	$127,883.61
Amount deducted in return	89,314.53
Additional amount allowed	$38,569.08

(g) This item represents the portion of the corrected net income for the period from January 1, 1926, to November 30, 1926, inclusive, during which your corporation was not affiliated with the General Gas and Electric Corporation. The amount is computed as follows:

Net income disclosed by return		$162,520.21
Add:		
Adjustments (a) to (e) inclusive	$315,923.20	
Deduct:		
Adjustment (f)	38,569.08	
		277,354.12
Corrected net income for 12 months		$439,874.33
Less:		
(439,874.33 divided by 12)		36,656.19
Amount allocated to the 11 months ended November 30, 1926		$403,218.14

[fol. 61] General Gas and Electric Corporation

Washington Gas Company

January 1 to November 30, 1926

Schedule 26

Net Income

Net income as disclosed by return	$2,846.83
As corrected	None.
Adjustment	$2,846.83

Nontaxable income and additional deductions:

(a) Period adjustment	$2,846.83

Schedule 26-A

Explanation of Items Changed

(a) Inasmuch as this corporation has been ruled not to be affiliated with the General Gas and Electric Corporation, for the period January 1 to November 30, 1926, inclusive, the above amount which was included in the consolidated net income as shown in the consolidated income tax return, has been excluded in accordance with the provisions of section 240 of the Revenue Act of 1926.

[fol. 62] Schedule 27

Boonton Gas Light and Improvement Company

Net Income

Net income as disclosed by return	$(374.23)
As corrected	None.
Net adjustment	$374.23

Unallowable deductions and additional income:

(a) Period adjustment	$374.23

Schedule 27-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 26-a above.

General Gas and Electric Corporation

Year Ended December 31, 1926

Binghamton Light, Heat and Power Company

Schedule 28

Net Income

Net income as disclosed by return	$311,103.73
As corrected	None.
Adjustment	$311,103.73

Nontaxable income and additional deductions:

(a) Period adjustment	$311,103.73

Schedule 28-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 26-a above.

[fol. 63]

Schedule 29

Northern Pennsylvania Power Company

Net Income

Net income as disclosed by return		$(200,785.61)
As corrected		78,170.41
Net adjustment		$278,956.02

Unallowable deductions and additional income:

(a) Net increase in reserve for taxes	$31,048.83	
(b) Amortized discount and expense	115,422.19	
(c) Loss on assets sold overstated	2,462.52	
(d) Obsolescence	73,609.39	
(e) Depreciation	59,598.54	
Total		$282,141.47

Nontaxable income and additional deductions:	
(f) Losses sustained — Bad debts	$3,185.45
Net adjustment as above	$278.956.02

General Gas and Electric Corporation

Year Ended December 31, 1926

Northern Pennsylvania Power Company

Schedule 29-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 64] (b) This item represents amortized discount and expense on bond issues of predecessor companies which was taken as a deduction from gross income in your income tax return for the taxable year and the amount is disallowed in accordance with the provisions of the decision of the United States Board of Tax Appeals in the case of the Western Maryland Railway Company vs. the Commissioner of Internal Revenue as published in United States Board of Tax Appeals Reports Volume 12, page 889.

(c) This item represents an overaccrual of losses sustained in connection with the sale of capital assets during the taxable year and taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69.

Amount deducted in return		$10,616.44
Cost	$29,129.14	
Depreciation sustained	3,977.35	
Adjusted value	$25,151.79	
Selling price	16,997.87	
Loss actually sustained		8,153.92
Amount disallowed as above		$2,462.52

(d) In the absence of sufficient information to support this deduction the amount is disallowed in accordance with the provisions of section 214(a)(8) of the Revenue Act of 1926 as interpreted by article 166, Regulations 69.

[fol. 65] General Gas and Electric Corporation

Year Ended December 31, 1926

Northern Pennsylvania Power Company

Schedule 29-A—(Continued)

Explanation of Items Changed—(Continued)

(e) For explanation of this adjustment see Item (b), schedule 4-A above. The amount is computed as follows:

Plant account at January 1, 1926	$456,182.36
Plant account at December 31, 1926	3,562,054.80
Average for the year:	
(456,182.36 plus 3,562,054.80 divided by 2)	2,009,118.58
Depreciation rate	2%
Depreciation deducted in return	99,780.91
Amount allowable:	
(2,009,118.58 times 2%)	40,182.37
Amount disallowed as above	$59,598.54

(f) This item represents the difference between the amount credited to the reserve for bad debts during the taxable year and the amount charged thereto. Inasmuch as this corporation has been allowed to deduct the actual amount of the losses sustained in prior years on account of bad debts this adjustment is necessary in accordance with the provisions of section 214(a)(7) of the Revenue Act of [fol. 66] 1926 as interpreted by articles 151 and 155, Regulations 69. The amount is computed as follows:

Amount charged to the reserve	$5,860.45
Amount credited to the reserve and deducted in the return	2,675.00
Additional loss allowed as above	$3,185.45

Schedule 30

Waverly Electric Light and Power Company

Net Income

Net income as disclosed by return	$150.00
As corrected	No change.

General Gas and Electric Corporation

Period Ended July 1, 1926

Sayre Electric Company

Schedule 31

Net Income

Net income as disclosed by return		$23,132.40
As corrected		52,029.64
Adjustment		$28,897.24
Unallowable deductions and additional income:		
(a) Loss on sale of property overstated	$18,317.25	
(b) Increase in reserve for taxes	5,976.79	
(c) Depreciation over accrued	4,603.20	
Total adjustment as above		$28,897.24

[fol. 67] Schedule 31-A

Explanation of Items Changed

(a) This item represents an overaccrual of losses sustained in connection with the sale of capital assets during the taxable year and taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69. The amount is computed as follows:

Amount deducted in return	$19,022.72

Loss sustained:			
Cost		$26,606.30	
Depreciation sustained	$25,240.83		
Selling price	660.00		
		25,900.83	
			$705.47
Amount disallowed as above			$18,317.25

(b) For explanation of this adjustment see Item (a), schedule 4-a above.

(c) For explanation of this adjustment see Item (b), schedule 4-a above. The amount is computed as follows:

[fol. 68] General Gas and Electric Corporation

Period Ended July 1, 1926

Sayre Electric Company

Schedule 31-A (Continued)

Explanation of Items Changed (Continued)

Plant account January 1, 1926	$918,839.58
Plant account December 31, 1926	$909,563.58
Average assets for the year:	
(918,839.58 plus 909,563.58 divided by 2)	$914,201.63
Depreciation rate per annum	2%
Depreciation sustained for 12 months:	
(914,701.63 times 2%)	$18,284.03
Depreciation sustained for 6 months:	
(18,284.03 times 6 divided by 12)	$9,142.01
Amount deducted in return	13,745.21
Amount disallowed as above	$4,603.20

Schedule 32

Susquehanna County Light and Power Company

Net Income

Net income as disclosed by return	$18,233.12
As corrected	21,546.28
Net adjustment	$3,313.16

[fol. 69] Unallowable deductions and additional income:

(a) Loss on property sold	$963.04
(b) Net increase in reserve for taxes	2,350.12
Total adjustment as above	$3,313.16

General Gas and Electric Corporation

Period Ended July 1, 1926

Susquehanna County Light and Power Company

Schedule 32-A

Explanation of Items Changed

(a) This item represents an overaccrual of losses sustained in connection with the sale of capital assets during the taxable year and taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69. The amount is computed as follows:

Amount deducted in return			$1,365.04
Loss sustained:			
Cost		$1,652.20	
Depreciation sustained	$1,035.20		
Selling price	215.00		
		1,250.20	
			402.00
Amount disallowed as above			$963.04

(b) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 70] Schedule 33

North Penn Power Company

Period Ended April 1, 1926

Net Income

Net income as disclosed by return	$1,632.83
As corrected	(3,043.90)
Net adjustment	$4,676.73

Unallowable deductions and additional income:	
(a) Loss on property sold	$307.61
Nontaxable income and additional deductions:	
(b) Net decrease in reserve for taxes	4,984.34
Net adjustment as above	$4,676.73

General Gas and Electric Corporation

Period Ended July 1, 1926

North Penn Power Company

Schedule 33-A

Explanation of Items Changed

(a) This item represents an overaccrual of losses sustained during the taxable year in connection with the sale of capital assets during the taxable year and taken as a deduction from gross income in your income tax return and is disallowed in accordance with the provisions of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69. The amount is computed as follows:

[fol. 71] Amount deducted in return			$434.13
Loss sustained:			
Cost		$875.00	
Depreciation sustained	$340.00		
Selling price	408.48		
		748.48	
			126.52
			$307.61

(b) For explanation of this adjustment see Item

Schedule 34

(a), schedule 4-A above.

Broad River Power Company

Year Ended December 31, 1926

Net Income

Net income as disclosed by return	$158,406.25
As corrected	224,401.25
Adjustment	$65,995.00

Unallowable deductions and additional income:

(a) Bad debts	$4,164.87	
(b) Amortized discount and expense	1,107.79	
(c) Net increase in reserve for taxes	16,193.76	
(d) Obsolescence	44,528.58	
Total adjustment as above		$65,955.00

[fol. 72] General Gas and Electric Corporation

Year Ended December 31, 1926

Broad River Power Company

Schedule 34-A

Explanation of Items Changed

(a) This item represents the amount charged to the reserve for bad debts in excess of the amount credited thereto during the taxable year and taken as a deduction from gross income in your income tax return. Inasmuch as you have been allowed as a deduction, in prior years, the amount credited to the reserve rather than the charges thereto the above amount is disallowed in accordance with the provisions of section 214(a)(7) of the Revenue Act of 1926 as interpreted by articles 151 and 155, Regulations 69.

(b) This item represents unamortized discount and expenses acquired by the corporation together with the assets of various companies, which are affiliated during the taxable year, and is disallowed as a deduction from gross income in accordance with the decision of the United States Board of Tax Appeals in the case of the Western Maryland Railroad Company as published in United States Board of Tax Appeals Reports Volume 12, page 889.

(c) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 73] (d) In the absence of sufficient information to support your contention with respect to this deduction the amount is disallowed in accordance with the provisions of section 214(a)(8) of the Revenue Act of 1926 as interpreted by article 166, Regulations 69.

Schedule 35

Columbia Railway Gas and Electric Company

Net Income

Net income as disclosed by return	(238,485.03)
As corrected	(103,929.03)
Adjustment	$134,556.00

General Gas and Electric Corporation

Year Ended December 31, 1926

Columbia Railway Gas and Electric Company

Schedule 35 (Continued)

Unallowable deductions and additional income:

(a) Loss on property sold and abandoned	$20,595.66	
(b) Obsolescence	113,960.34	
Total adjustment		$134,556.00

[fol. 74]

Schedule 35-A

Explanation of Items Changed

(a) and (b) Inasmuch as the information submitted by you in schedule Jc-page 5 of your income tax return for the year 1926, does not show the computation of the above amounts in sufficient detail, as required under section 214(2) (8) of the Revenue Act of 1926 as interpreted by articles 161 and 166, Regulations 69, they are disallowed.

Schedule 36

The Parr Shoals Power Company

Period Ended November 10, 1926

Net Income

Net income as disclosed by return	$None.
As corrected	No change

Schedule 37

Public Service Company of South Carolina

Year Ended December 31, 1926

Net Income

Net income as disclosed by return	$None.
As corrected	No change.

Schedule 38

Columbia Gas Light Company

Net Income

Net income as disclosed by return	$None.
As corrected	No change.

[fol. 75] General Gas and Electric Corporation

Blue Ridge Power Company

Period May 1 to December 31, 1926

Schedule 39

Net Income

Net income as disclosed by return	$(119,507.06)
As corrected	(7,967.80)
Adjustment	$111,539.26

Unallowable deductions and additional income:

(a) Depreciation	$45,049.14	
(b) Amortized bond discount and expense	12,039.58	
(c) Miscellaneous unallocated items	5,483.53	
(d) Operating expenses applicable to prior years	21,827.67	
(e) Net credit to Reserve for Taxes	26,656.44	
(f) Period adjustment	482.90	
Total		$111,539.26

[fol. 76] Schedule 39-A

Explanation of Items Changed

(a) Inasmuch as the information submitted with your return is not sufficient to enable the Bureau to determine the correctness of this deduction, the amount is disallowed in accordance with the provisions of section 214(a)(8) of the Revenue Act of 1926, as interpreted by article 161, Regulations 69. The amount was not written off on the books.

(b) The information submitted with your return is not sufficient to enable the Bureau to determine the correctness of this deduction and since the amount has not been written off on the books, the deduction is disallowed in accordance with the provisions of section 233(a) of the Revenue Act of 1926, as interpreted by article 545(3)(a), Regulations 69.

(c) This unexplained item is disallowed for the reason that character of the deduction is not shown and the amount has not been charged off on the books.

(d) This item represents expenses of prior years and the amount is disallowed in accordance with the provisions of section 214(a) of the Revenue Act of 1926, as interpreted by article 112, Regulations 69.

[fol. 77] General Gas and Electric Corporation

Blue Ridge Power Company

Period May 1 to December 31, 1926

Schedule 39-A (Continued)

Explanation of Items Changed (Continued)

(e) For explanation of this adjustment see Item (a), schedule 4-A, above.

(f) Net loss as corrected	$8,450.70
Amount applicable to this period (231/245)	7,967.80
Amount applicable to period not affiliated	$482.90

Schedule 40

Manufacturers Power Company

Net Income

Net income as disclosed by return		$(49,206.54)
As corrected		2,021.55
Net adjustment		$51,228.09
Unallowable deductions and additional income:		
(a) Depreciation	$49,206.54	
(b) Bond discount and expense	7,021.55	
Total		$56,228.09
Nontaxable income and additional deductions:		
(c) Net decrease in reserve for taxes		5,000.00
Net adjustment as above		$51,228.09

[fol. 78]

Schedule 40-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 39-A above.

General Gas and Electric Corporation

Manufacturers Power Company

Period May 1 to December 31, 1926

Schedule 40-A (Continued)

Explanation of Items Changed (Continued)

(b) This item represents the overaccrual of amortized bond discount taken as a deduction from gross income in your income tax return for the taxable year and is disallowed in accordance with the provisions of section 233(a) of the Revenue Act of 1926 as interpreted by article 545(3)(a), Regulations 69. The amount is computed as follows:

Amount deducted in return	$17,931.95
Allowable amount	10,910.40
Amount disallowed as above	$7,021.55

(c) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 79] Schedule 41

Melrose Power and Manufacturing Company

Period October 1 to December 31, 1926

Net Income

Net income as disclosed by return	$6,429.00
As corrected	12,698.27
Adjustment	$6,269.27

Unallowable deductions and additional income:

(a) Depreciation not written off	$1,726.71	
(b) Bad debts	100.00	
(c) Net credit to reserve for taxes	4,442.56	
Total adjustment as above		$6,269.27

General Gas and Electric Corporation

Melrose Power and Manufacturing Company

Period October 1 to December 31, 1926

Schedule 41-A

Explanation of Items Changed

(a) For explanation of this adjustment see Item (a), schedule 39-A above.

(b) Since the corporation has not complied with the provisions of section 214(a)(7) as interpreted by article 155, Regulations 69, with respect to bad debts, the above amount is disallowed. The amount represents the amount credited to the reserve for bad debts rather than the amount charged thereto.

(c) For explanation of this adjustment see Item (a), schedule 4-A above.

[fol. 80] Schedule 42

North Carolina Public Service Company

Year Ended December 31, 1926

Net Income

Net income as disclosed by return		$123,376.95
As corrected		101,968.55
Net adjustment		$21,408.40
Unallowable deductions and additional income:		
(a) Addition to reserve for injuries and damages	$2,400.00	
(b) Net credit to reserve for taxes	17,852.65	
(c) Loss on sale of property	10,805.08	
(d) Bad debts	8,904.94	
(e) Miscellaneous deductions	1,064.04	
(f) Amortized debt discount and expense	190,306.42	
Total		$231,333.13
Nontaxable income and additional deductions:		
(g) Depreciation		252,741.53
Net adjustment as above		$21,408.40

[fol. 81] General Gas and Electric Corporation

Year Ended December 31, 1926

North Carolina Public Service Company

Schedule 42-A

Explanation of Items Changed

(a) An analysis of the reserve for injuries and damages discloses that the net credit to the account was $2,400.00, in excess of the amount shown in schedule "L" of the income tax return; therefore the above amount is disallowed.

(b) For explanation of this adjustment see Item (a), schedule 4-A above.

(c) Inasmuch as the information submitted does not conform to the requirements of section 204 of the Revenue Act of 1926 as interpreted by article 1591, Regulations 69, the above amount is disallowed.

(d) This amount was charged to the reserve for contingencies and represents an additional deduction for bad debts, which was taken in your income tax return for the taxable year, and since this corporation has been allowed to deduct bad debts on the accrual basis, in prior years as provided in section 214(a)(7) as interpreted by article 155 of Regulations 69, this deduction is disallowed.

[fol. 82] (e) In the absence of sufficient information relative to this deduction the amount is disallowed in accordance with the provisions of section 234(a) of the Revenue Act of 1926 as interpreted by article 561, Regulations 69.

(f) This item represents bond discount and expense deducted from gross income in your income tax return for the taxable year which was not written off the books and in the absence of sufficient information to enable the Bureau to compute the correct amount allowable the entire deduction is disallowed. See section 233(a) of the Revenue Act of 1926 as interpreted by article 545(3)(a) of Regulations 69.

(g) For explanation of this adjustment see Item (b), schedule 7-A above. The amount is computed as follows:

Plant account January 1, 1926	$6,302,831.56
Plant account December 31, 1926	$8,139,541.68
Average for the year:	
(6,302,831.56 plus 8,139,541.68 divided by 2)	$7,221,186.62
Depreciation sustained:	
(7,221,186.62 times 3½%)	$252,741.53
Amount deducted in return	None.
Amount allowed as above	$252,741.53

[fol. 83] General Gas and Electric Corporation

Year Ended December 31, 1926

Salisbury and Spencer Railway Company

Schedule 43

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 44

Greensboro Bus Company

Net Income

Net loss as disclosed by return	$(3,671.65)
As corrected	No change.

Schedule 45

Winston-Salem Gas Company

Period June 22 to July 1, 1926

Net Income

Net income as disclosed by return	($2,399.37)
As corrected	(51.00)
Adjustment	$2,348.37

Unallowable deductions and additional income:

(a) Net loss prior period	$1,373.78	
(b) Period adjustment	974.59	
Total adjustment as above		$2,348.37

[fol. 84] Schedule 45-A

Explanation of Items Changed

(a) The net loss sustained prior to affiliation with the General Gas and Electric corporation is excluded from the consolidated net income.

(b) Net loss as corrected	$1,025.59
Amount applicable to affiliated period	51.00
Amount excluded from consolidated income as above	$974.59

General Gas and Electric Corporation

Year Ended December 31, 1926

Saluda Manufacturing Company

Schedule 46

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 47

South Carolina Power Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

[fol. 85]

Schedule 48

Central Carolina Power Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

Schedule 49

Enoree Power Company

Net Income

Net income as disclosed by return	None.
As corrected	No change.

General Gas and Electric Corporation. Year ended December 31, 1926

Schedule 50

Consolidated Net Income

Net income as corrected:

General Gas and Electric Corporation	Schedule	1	$355,625 48
Saylorsburg Light and Power Company	"	4	3,630 05
Wahtawah Company	"	5	-0-
Reading Transit Company	"	6	383,623 57
Neversink Mountain Railway Company	"	10	-0-
Reading and Hamburg Railway Company	"	11	-0-
Twelfth and Thirteenth Street Railway Company	"	12	-0-
Womelsdorf and Meyerstown Railway Company	"	13	-0-
Norristown Bus Company	"	14	-0-
Hamburg Gas and Electric Company	"	15	67,835 71
Topton Electric Light and Power Company	"	16	12,988 17

General Gas and Electric Corporation. Year ended December 31, 1926.

Schedule 50

(continued)

Consolidated Net Income (continued)

[fol.86] Weisenberg Township Electric Light and Power Company	Schedule	17	$219.97
Ortanna Electric Light and Power Company	"	18	4,265.26
Birdsboro Electric Company	"	19	15,929.62
Bernville Light Heat and Power Company	"	21	2,276.49
Berks-Lehigh Electric Company	"	22	1,447.74
Newton Gas Company	"	24	9,355.45
New Jersey Power and Light Company	"	25	36,656.19
Washington Gas Company	"	26	-0-
Boonton Gas Light and Improvement Company	"	27	-0-
Binghamton Light, Heat and Power Company	"	28	-0-
Northern Pennsylvania Power Company	"	29	78,170.41
Waverly Electric Light and Power Company	"	30	150.00
Sayre Electric Company	"	31	52,029.64
Susquehanna County Light and Power Company	"	32	21,546.28
Broad River Power Company	"	34	224,401.25
The Parr Shoals Power Company	"	36	-0-
Public Service Company of South Carolina	"	37	-0-
Columbia Gas Light Company	"	38	-0-
Manufacturers Power Company	"	40	2,021.55
Melrose Power and Manufacturing Company	"	41	12,698.27
North Carolina Public Service Company	"	42	101,968.55
Salisbury and Spencer Railway Company	"	43	-0-
Saluda Manufacturing Company	"	46	-0-
South Carolina Power Company	"	47	-0-
Central Carolina Power Company	"	48	-0-
Enoree Power Company	"	49	-0-
Total			$1,386,839.65

[fol. 87]

Net losses as corrected:

General Finance Corporation	Schedule	2	$25,480.62
New Jersey Power Corporation	"	3	15,300.00
Oley Valley Railway Company	"	7	168.51
Oley Valley Quarry Company	"	8	137.36
Reading Transit Bus Company	"	9	3,555.14
The French Creek Electric Company	"	20	42.44
The Jersey Corporation	"	23	11,523.64
North Penn Power Company	"	33	3,043.90
Columbia Railway Gas & Electric Company	"	35	103,929.03
Blue Ridge Power Company	"	39	7,967.80
Greensboro Bus Company	"	44	3,671.65
Winston-Salem Gas Company	"	45	51.00
Total			174,871.09
Consolidated net income as corrected			$1,211,968.56

[fol. 88] Schedule 51

Computation of Tax—1926 Rates

		Income	Tax
Corrected consolidated net income, schedule 50, taxable at 13½		$1,211,968.56	$163,615.76
Tax previously assessed:			
Original number 406627		106,565.42	
Additional			
Newton Gas Company (March 1930, P) LO Spl _2		478.70	
Total assessments		$107,044.12	
Less:			
Amounts allocated to companies for the period not affiliated:			
New Jersey Power and Light Company	$10,813.72		
Washington Gas Company	202.47		
Binghamton Light, Heat & Power Co	22,581.22	33,597.41	73,446.71
Additional tax to be assessed			$90,169.05

[fol. 89] Exhibit "B" to Petition

General Gas & Electric Corporation

Affiliated Taxpayers The same as determined by the respondent except:	Period of Affiliation The same as determined by the respondent except:
(1) New Jersey Power and Light Company	January 1, 1926 to November 30, 1926
(2) Washington Gas Company	January 1, 1926 to November 30, 1926
(3) Boonton Gaslight & Improvement Company	January 1, 1926 to March 31, 1926
(4) Binghamton Light, Heat & Power Company	January 1, 1926 to December 31, 1926
(5) Winston-Salem Gas Company	January 1, 1926 to December 31, 1926

Exhibit "C" to Petition

General Gas & Electric Corporation

Taxpayers engaged in related trades or businesses The same as determined by the respondent except:	Period of ownership or control The same as determined by the respondent except:
(1) New Jersey Power and Light Company	January 1, 1926 to November 30, 1926
(2) Washington Gas Company	January 1, 1926 to November 30, 1926
(3) Boonton Gaslight & Improvement Company	January 1, 1926 to March 31, 1926
(4) Binghamton Light, Heat & Power Company	January 1, 1926 to December 31, 1926
(5) Winston-Salem Gas Company	January 1, 1926 to December 31, 1926

[fol. 90] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

ANSWER—Filed March 30, 1931

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above named taxpayer, admits and denies as follows:

I. Admits the allegations contained in Paragraph I.

II. Admits the allegations contained in Paragraph II.

III. Admits the allegations contained in Paragraph III.

IV. Admits the allegations contained in Paragraph IV.

V(A) to (F), inclusive. Denies that the Commissioner has committed any errors as alleged in subparagraphs (A) [fol. 91] to (F), inclusive, of Paragraph V.

VI(A). Admits the allegations contained in Paragraph VI(A).

VI(B), (B-1) and (B-2). Denies the allegations contained in subparagraphs (B), (B-1) and (B-2) of Paragraph VI.

VI(C), (C-1), (C-2) and (C-3). Denies the allegations contained in subparagraphs (C), (C-1), (C-2) and (C-3) of Paragraph VI.

VI(D), (1) to (66), inclusive. Denies the allegations contained in subparagraphs (1) to (66), inclusive, of Paragraph VI(D).

VI(E), (1) to (3), inclusive. Denies the allegations contained in subparagraphs (1) to (3), inclusive, of Paragraph VI(E).

VI(F). Denies the allegations contained in Paragraph VI(F).

VII. Avers that prior to the running of the statute of limitations applicable to the assessment and/or collection of the taxes in controversy, and thereafter, both the Commissioner of Internal Revenue and the taxpayer duly en-

tered into written agreements consenting to a later determination, assessment, and collection of the taxes in controversy in accordance with the provisions of the Revenue Acts of 1926 and 1928, and that said agreements extended the time for the determination, assessment and collection [fol. 92] of the said taxes beyond the date of the running of the said statute of limitations and up to and including six months and sixty days after the final decision of the United States Board of Tax Appeals in the proceedings herein.

VIII. Denies generally and specifically each and every allegation contained in taxpayer's petition and not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. Charest, General Counsel, Bureau of Internal Revenue. Of Counsel: Eugene Meacham, C. E. Lowery, Special Attorneys, Bureau of Internal Revenue.

[fol. 93] BEFORE UNITED STATES BOARD OF TAX APPEALS

[Title omitted]

REPLY TO ANSWER—Filed April 25, 1931

The General Gas and Electric Corporation, by its counsel, Francis J. Sweeney, for reply to the answer of the respondent herein, denies and avers as follows:

VII. Denies the allegations contained in paragraph VII of the respondent's answer.

Wherefore, your petitioner prays that its petition be granted.

Francis J. Sweeney, Counsel for the Petitioner. Room 2401, 61 Broadway, New York, N. Y.

Dated, April 24, 1931.

[fol. 94] To B. D. Gamble, Clerk, United States Board of Tax Appeals, Washington, D. C. C. M. Charest, General Counsel, Bureau of Internal Revenue, Washington, D. C. Eugene Meacham, C. E. Lowery, Attorneys, Washington, D. C.

[fol. 95] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON, D. C.

Docket No. 52,639

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

Docket No. 52,680

BINGHAMTON LIGHT, HEAT & POWER COMPANY, Petitioner,

Docket No. 49,079

NEW JERSEY POWER & LIGHT COMPANY, as Successor by merger to Newton Gas Company, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

STIPULATION OF FACTS—Filed January 10, 1935

It is hereby stipulated and agreed, by and between the parties hereto, by their respective attorneys, that the above-entitled proceedings having been consolidated for hearing by order of the Board of Tax Appeals, the following facts shall be taken as true, provided this stipulation shall be without prejudice to the right of either party to present further evidence not inconsistent with the facts herein stipulated.

[fol. 96] 1. The petitioner, General Gas & Electric Corpor-tion, a corporation duly organized and existing under the laws of the State of Delaware, is and was at all times material to this proceeding, engaged in the business of holding securities and thus controlling public utility subsidiaries serving in the States of New York, New Jersey, Pennsylvania, Maryland, North Carolina, South Carolina and Florida.

2. The petitioners, with their affiliated taxpayers, filed a consolidated income tax return for the calendar year 1926. A list of the affiliated taxpayers appears on pages 1 to 5, inclusive, of the deficiency notice, being Exhibit A attached to the petition in Docket No. 52,639. By an agreement signed by the parent corporation and each of its subsidiaries, the entire income tax liability of each of the petition-

by Section 5 of the Act of April 17, 1876, P. L. 30, of the laws of the Commonwealth of Pennsylvania with the approval and sanction of the Public Service Commission of Pennsylvania pursuant to Section 3(c), Article III and Sections 18 and 19, Article V of the Public Service Company Law of the Commonwealth of Pennsylvania with the issuance of a report, order and certificate of public convenience. (Copies of the report, order and certificate of public convenience and the application of the companies to the Public Service Commission are attached hereto and made a part hereof, marked Exhibit B).

As a result of said transfer, Northern Pennsylvania Power Company took over all the assets and assumed all the liabilities of the Susquehanna County Light and Power Company, including the liability of said First Mortgage Bonds, which constituted a prior lien upon the assets so transferred, the further consideration paid for said assets [fol. 100] was stock of the transferee issued in exchange for the surrender of the stock of the transferor. At the time of the aforesaid transfer of the assets of the Susquehanna County Light and Power Company, the principal amount of the bonds then outstanding was $600,000 and the amount of the unamortized debt discount and expense incurred upon the issue and sale of said bonds was $20,509.51, which amount was transferred as a deferred charge asset to the books of the Northern Pennsylvania Power Company. On July 23, 1926, Northern Pennsylvania Power Company redeemed $600,000 principal amount of said bonds (being the entire amount then outstanding) at 105% of the principal amount thereof, thereby incurring and paying premiums in the amount of $30,000, in accordance with the terms of the Trust Indenture.

The Northern Pennsylvania Power Company in 1926, deducted $587.40 amortization of debt discount and expense and there remained at the date of redemption $19,922.11 unamortized debt discount and expense incurred through the issuance and sale of said bonds. The petitioners claim the right to deduct from the gross income of Northern Pennsylvania Power Company, for 1926, said premium amounting to $30,000 and said unamortized debt discount and expense amounting to $19,922.11. Said amounts $19,922.11, unamortized debt discount and expense and $30,000.00 premium on retirement of said bonds in 1926, were not taken as an expense on the books of the Northern Pennsylvania

Power Company, but were transferred to debt discount and expense applicable to the refunding issue. The funds for the retirement of said First Mortgage 6% bonds were ob- [fol. 101] tained from the proceeds of the sale in 1926, of $1,950,000.00 principal amount Northern Pennsylvania Power Company, First and Refunding Mortgage Bonds Series A due June 1, 1956.

5. Piedmont Power and Light Company was a corporation organized under the laws of the State of North Carolina in 1911. On or about May 1, 1919, the Piedmont Power and Light Company executed an Indenture and Trust Agreement providing for the issuance of its First mortgage 15 Year Sinking Fund Gold 6% Series Bonds. On or about May 1, 1919, or thereafter, it issued and sold its First Mortgage 6% Series Gold Bonds. On March 15, 1921, by supplemental indenture it provided for the issuance and sale of a 7% series and by the terms of which it was provided that the 7% series could be converted at the holders' option into 6% series upon payment of an 8% cash premium at conversion. In 1924, the assets of Piedmont Power and Light Company were sold and transferred to North Carolina Public Service Company, Inc., and the liabilities assumed. The North Carolina Public Service Company, Inc., thereupon assumed the aforesaid mortgage liability under the original and supplemental Indenture of the Piedmont Power and Light Company. The North Carolina Public Service Company incurred during 1925 and 1926, debt discount amounting to $6,884.50, pursuant to the provisions of the supplemental indenture for the conversion of the 7% series into 6% series by paying an 8% cash premium on principal amount of the bonds at conversion subsequent to its assumption of the [fol. 102] mortgage liability. There was amortized $866.84, leaving unamortized debt discount of $6,017.66 claimed by the petitioner in 1926. The bonds were called and redeemed on November 1, 1926, and of the outstanding bonds there were $183,700 of the 7% series retired at 105 and $184,100 of the 6% series retired at 103 making the premiums on the former $9,185.00 and on the latter $5,523.00, which thereupon accrued and were paid. In addition thereto, said taxpayer incurred and paid legal and advertising expense in connection with the redemption of $2,112.50. The petitioners claim the right to deduct from the gross income of

North Carolina Public Service Company, Inc., for the year 1926, said premiums amounting to $14,708.00; the unamortized debt discount which accrued subsequent to its assumption of said debt obligation in the amount of $6,017.66; also the legal and advertising expense in connection with the redemption and retirement of said debt obligation in the amount of $2,112.50.

6. North Carolina Public Service Company, Inc., was incorporated under the laws of North Carolina on or about February 26, 1924. Thereafter it issued and sold its First Lien and Refunding Gold 6½s Series A Bonds due February 1, 1944. The bonds were callable on thirty days notice on any interest date to and including February 1, 1929, at 107½. On August 1, 1926, it redeemed $880,000.00 (being all the outstanding bonds) of its First Lien and Refunding Mortgage 6½% Gold Bonds Series A due February 1, 1944. Upon the making of the aforesaid retirement, said taxpayer [fol. 103] incurred and paid a premium of $66,000 pursuant to the terms of the Indenture and in addition thereto it incurred and paid in connection with said redemption legal and advertising expense amounting to the sum of $1,846.79. At the time of the aforesaid retirement in 1926, there existed unamortized debt expenses incurred in connection with the issuance and sale of said bonds in the amount of $16,157.30, of which the respondent amortized $747.79 in 1926, leaving $15,409.51 unamortized in 1926.

7. North Carolina Public Service Company, Inc., by indenture dated May 1, 1924, issued and sold its First Lien and Refunding Mortgage 6% Gold Bonds Series B due May 1, 1954, and incurred discount and expense of which there was unamortized at the time of the retirement the sum of $56,176.48, of which the respondent allowed as a deduction $489.52 in 1926, leaving $55,686.96 unamortized in 1926. The bonds were callable on any interest date on thirty days notice up to and including November 1, 1928 at 105, and pursuant to the terms of the indenture there were called and redeemed $570,500.00 (being the entire amount outstanding) principal amount of said First Lien and Refunding Mortgage 6% Gold Bonds Series B due May 1, 1954, at a premium of 105 and said taxpayer thereby incurred and paid a premium of $28,525.00. The petitioners claim the aforesaid amounts of premiums, debt retirement expense and unamortized debt discount and expense set forth in para-

graphs 5, 6, supra and 7, as deductions from the 1926 gross income of North Carolina Public Service Company, briefly summarized as follows:

[fol. 104]

Description of Debt Obligation Redeemed and Retired by the Petitioners' Affiliated Subsidiary, North Carolina Public Service Company in 1926	Principal Amount of the Debt Retired in 1926	Premium Accrued & Paid upon retirement in 1926	Expense Accrued & Paid upon retirement in 1926	Unamortized D. D. & E. at date of redemption
Piedmont Pr. & Lt. Co. First Mtg. Gold 6s and 7s by supplemental indenture which continued as a prior lien upon the acquisition of the issuing company's assets and assumption of its liabilities:				
7s	183,700	9,185.00)		6,017.66
6s	184,100	5,523.00)	2,112.50	
North Carolina Pub. Serv. Co., Inc., First Lien & Refund. Mtg. 6½% Gold Bonds Ser. A due February 1, 1944	880,000	66,000.00	1,846.79	15,409.51
North Carolina Public Serv. Co., Inc., First Lien & Refund. Mtg. 6s Gold Bonds Ser. B due May 1, 1954	570,000	28,525.00		55,686.96
Total	1,818,300	109,233.00	3,959.29	77,114.13
Total Premiums, Retirement Expense & Unamortized D. D. & E.				$190,306.42

8. Said amount of $190,306.42 was not taken as an expense on the books of the North Carolina Public Service Company, [fol. 105] but transferred to debt discount and expense applicable to the refunding issue. The funds used for the retirement and redemption of the bonds described in paragraphs 5, 6 and 7, supra, were from the proceeds of sale of the North Carolina Public Service Company First and Refunding Mortgage 5% Gold Bonds due July 1, 1956, of which there had been issued and sold up to October 1, 1926, bonds of the principal amount of $3,125,000.00.

9. The only issue submitted to the Board for redetermination in this proceeding is as follows: whether the respondent erred in refusing to allow as deductions from the gross income of your petitioners' aforesaid affiliated subsidiaries for the year 1926 the aforesaid premiums, retirement expense and unamortized debt discount and expense. All

other issues raised by the pleadings have been settled by agreement of the parties and the result of such settlement is reflected in the following stipulation as to the amounts of deficiencies, to wit:

a. If the action of the Respondent in disallowing the aforesaid premiums, debt retirement expense, and unamortized debt discount and expense is sustained the amount of the deficiency for the calendar year 1926 is $32,005.06.

b. If the aforesaid claims for deduction of premiums, debt retirement expense and unamortized debt discount and expense are decided in favor of the Petitioners, the amount of the overpayment is $9,268.30.

[fol. 106] If the Board's decision is otherwise than indicated in paragraphs "a" or "b" supra, the deficiency or overpayment should be determined under Board Rule 50.

Regardless of the decision of the foregoing questions, it is hereby stipulated and agreed that there is a deficiency for the period January 1, 1926 to April 30, 1926, against Binghamton Light, Heat and Power Company in the amount of $6,876.77, and that there is no deficiency or overpayment with respect to Docket No. 49,079, New Jersey Power & Light Company as successor by merger to Newton Gas Company.

The petitioner made the following payments on account of its federal income tax liability for the calendar year 1926:

Date of Payment	Amount of Payment
March 15, 1927	$6,075.00
June 15, 1927	47,207.71
September 15, 1927	26,641.35
December 16, 1927	26,641.36
Total	$106,565.42

The petitioner filed a claim for refund in the amount of $95,565.09 on March 13, 1930, with Collector of Internal Revenue, Custom House, New York City, N. Y.

Francis J. Sweeney, Counsel for Petitioner. (Signed) Robert H. Jackson, Counsel for Respondent.

[fol. 107] EXHIBIT "A" TO STIPULATION OF FACTS

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

STATE OF PENNSYLVANIA,
County of Dauphin, ss:

I, John G. Hopwood, Secretary of the Public Service Commission of the Commonwealth of Pennsylvania, do hereby certify that the papers hereto attached are true and correct copies of the report, order and certificate of public convenience issued by the Commission under date of March 9th, 1926, in re Application North Penn Power Company and Northern Pennsylvania Power Company, for approval of the sale of the franchises and property of the former to the latter company, as the same remain of record in the offices of the Commission, at Application Docket No. 13917-1925.

In Testimony Whereof, I have hereunto set my hand and caused the seal of the Commission to be affixed hereto this twenty-fourth day of March, 1926.

John G. Hopwood, Secretary, The Public Service Commission of the Commonwealth of Pennsylvania.

[fol. 108] Form L 2—10M—8-4-25.
A.13917-1925.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

In the Matter of the Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY, under Section 3(c), Article III, and Sections 18 and 19, Article V, of The Public Service Company Law, for the Approval of the Sale of the Property and Franchises of the Former to the Latter Company.

Certificate of Public Convenience

The Public Service Commission of the Commonwealth of Pennsylvania, hereby certifies that after an investigation and hearing had on the above entitled application, it has, by its report and order made and entered, a copy of which

is hereto attached and made a part hereof, found and determined that the granting of said application is necessary and proper for the service, accommodation, convenience and [fol. 109] safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

In Testimony Whereof, The Public Service Commission of The Commonwealth of Pennsylvania has caused these presents to be signed and sealed, and duly attested by its Secretary, at its office in the city of Harrisburg, this ninth day of March, 1926.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) S. Ray Shelby, Acting Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 110] THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 13917-1925

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for the Approval of Sale of the Property and Franchises of the Former to the Latter Company.

Report and Order

By the COMMISSION:

This case being before the Commission upon petition of North Penn Power Company and Northern Pennsylvania Power Company, dated November 30, 1925, for the approval of sale of the property and franchises of the former to the latter company, as more fully described in the deed; and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, the Commission finds and determines that the granting of said petition is necessary and proper for the service, accommodation, convenience and safety of the public, and that a certificate of Public Convenience be is- [fol. 111] sued evidencing the Commission's approval thereof: Provided, that nothing in this proceeding which

fixes or tends to fix the value of the property of either the vendor or vendee companies or the manner in which the vendee company records the transaction on its books of account shall be binding upon the Commission in any future proceeding requiring a determination by it of the fair value of the property and franchises of either of the companies:

Now, to-wit, March 9, 1926, It is Ordered: That a Certificate of Public Convenience be issued evidencing the Commission's approval of the said sale in accordance with the deed.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) S. Ray Shelby, Acting Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 112] BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 1925

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchise and Property of the Former to the Latter Company.

To the Public Service Commission of the Commonwealth of Pennsylvania:

The petition of North Penn Power Company and Northern Pennsylvania Power Company respectfully represents:

1. The names and addresses of your petitioners are as follows: North Penn Power Company, Borough of Blossburg, Tioga County, Pennsylvania; Northern Pennsylvania Power Company, 207 Main Street, Borough of Towanda, Bradford County, Pennsylvania.

2. The name and address of your petitioners' attorney are: Hedley V. Cooke, 31 Nassau Street, New York City.

[fol. 113] 3. Except as otherwise stated, each of the corporations hereinafter named was duly organized for the

purpose of supplying light, heat and power by means of electricity to the public in the borough, town, city or district in the Commonwealth of Pennsylvania in the particular case mentioned, and to such persons, partnerships and corporations residing therein or adjacent thereto as might desire the same, under the Act of April 29, 1874, P. L. 73 as amended by the Act of May 8, 1889, P. L. 136 and the amendments and supplements thereto and received letters patent granting to it perpetual existence, the articles of association having been in each case duly recorded in the proper county.

4. Your petitioner North Penn Power Company was duly organized under the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under agreement dated January 16, 1923 of the following corporations:

(1) The Blossburg Electric Light & Power Company (hereinafter called No. 2).

(2) The Mansfield Electric Company, which received letters patent dated October 14, 1897, for the Borough of Mansfield, Tioga County.

(3) Morris Run Electric Company, which received letters patent dated May 11, 1922 for the Township of Hamilton, Tioga County.

(4) Elkland Intertownship Electric Company, which re- [fol. 114] ceived letters patent dated January 15, 1923 for the Township of Elkland, Tioga County.

(5) Nelson Intertownship Electric Company, which received letters patent dated January 15, 1923 for the Township of Nelson, Tioga County.

(6) Lawrence Intertownship Electric Company, which received letters patent dated January 15, 1923 for the Township of Lawrence, Tioga County.

(7) Sullivan Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Sullivan, Tioga County.

(8) Osceola Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Osceola, Tioga County.

(9) Lawrenceville Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Lawrenceville, Tioga County.

(10) Richmond Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Richmond, Tioga County.

(11) Westfield Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Westfield, Tioga County.

[fol. 115] (12) Tioga Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Tioga, Tioga County.

(13) Elkland Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Elkland, Tioga County.

(14) Bloss Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Bloss, Tioga County.

(15) Duncan Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Duncan, Tioga County.

(16) Westfield Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Westfield, Tioga County.

(17) Knoxville Interboro Electric Company, which received letters patent dated January 15, 1923, for the Borough of Knoxville, Tioga County.

(18) Deerfield Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Deerfield, Tioga County.

(19) Tioga Intertownship Electric Company, which re-
[fol. 116] ceived letters patent dated January 15, 1923, for the Township of Tioga, Tioga County.

(20) Ward Intertownship Electric Company, which received letters patent dated January 15, 1923, for the Township of Ward, Tioga County.

The Blossburg Electric Light & Power Company No. 2 was duly organized under the Act of May 3, 1909, P. L. 408

and the amendments thereof and supplements thereto by merger and consolidation under agreement dated December 18, 1913, of:

(1) The Blossburg Electric Light & Power Company (No. 1) which received letters patent for the Borough of Blossburg, Tioga County, on December 6, 1897;

(2) The Covington Electric Light Company, which received letters patent for the Township of Covington, Tioga County, on November 24, 1913;

(3) Covington Township Electric Light Company, which received letters patent for the Borough of Covington, Tioga County (now Township of Putnam) on November 24, 1913;

all of which constituent companies last above mentioned had, in addition to their electric powers, the right to furnish heat by means of steam necessarily generated at their electric plants.

[fol. 117] Your petitioner North Penn Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30, the franchises and all of the property real, personal and mixed of the following corporations:

(1) The Canton Illuminating Company, which received letters patent dated April 6, 1899, for the Borough of Canton, County of Bradford. Deed dated September 29, 1923, approved by your Honorable Commission at Application Docket 9356 of 1923.

(2) Troy Electric Light, Heat & Power Company, which received letters patent dated December 27, 1904, for the Borough of Troy, County of Bradford. Deed dated September 27, 1923, approved by your Honorable Commission at Application Docket No. 9355/1923.

(3) Galeton Electric Company, which received letters patent dated October 13, 1922, for the Borough of Galeton, County of Potter. Deed dated November 8, 1923, approved by your Honorable Commission at Application Docket No. 9729/1923.

(4) Union North Penn Power Company, which received letters patent on November 11, 1923, for the Township of Union, County of Tioga. Deed dated October 30, 1923, ap-

proved by your Honorable Commission at Application Docket No. 9536/1923.

[fol. 118] (5) Canton North Penn Power Company, which received letters patent on September 11, 1923, for the Township of Canton, County of Bradford. Deed without date, approved by your Honorable Commission at Application Docket No. 9534/1923.

(6) Armenia North Penn Power Company which received letters patent on September 12, 1923, for the Township of Armenia, County of Bradford. Deed dated October 30, 1923, approved by your Honorable Commission at Application Docket No. 9535/1923.

(7) Columbia Township Bradford Electric Company, which received letters patent on October 9, 1923, for the Township of Columbia, Bradford County. Deed dated August 27, 1925, approved by your Honorable Commission at Application Docket 13708 of 1925.

(8) Alba North Penn Power Company, which received letters patent on January 14, 1924 for the Township of Alba, Bradford County. Deed dated August 22, 1925, approved by your Honorable Commission at Application Docket No. 13706/1925.

(9) Troy Township Bradford Electric Company which received letters patent on October 9, 1923, for Troy Township, Bradford County. Deed dated August 27, 1925, approved by your Honorable Commission at Application Docket No. 13707/1925.

[fol. 119] Your petitioner North Penn Power Company has on authorized capital stock of (a) 20,000 shares of Series A 7% Cumulative Preferred stock of a par value of $50 each of which 2,538 shares were outstanding on October 31, 1925; (b) 1,200 shares of Series B 6% Non-cumulative Preferred stock of a par value of $50 each of which 851 shares were outstanding in the hands of the public and 15 shares were in the company's treasury on October 31, 1925; (c) 12,000 shares of Common stock all of which were on October 31, 1925, and now are outstanding.

Your said petitioner has an authorized indebtedness of $2,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $562,000 principal amount of Thirty year 6% Sinking Fund Gold Bonds

secured by First Mortgage to Harrisburg Trust Company as Trustee, dated February 1, 1923, of which $9,300 principal amount were in the company's treasury.

5. Your petitioner, Northern Pennsylvania Power Company, was duly organized under the provisions of the Act of May 3, 1909, P. L. 408 and the amendments thereof and supplements thereto by merger and consolidation under the name Towanda Gas & Electric Company, pursuant to agreement dated July 1, 1920, of Towanda Gas & Water Company and Towanda Electric Illuminating Company, which merger your Honorable Commission approved by the issuance of a certificate of public convenience at Application Docket No. 4203 of 1920. Thereafter your said petitioner by proceedings duly had pursuant to the statute in such [fol. 120] case made and provided, changed its name to Northern Pennsylvania Power Company.

Said Towanda Gas & Water Company was incorporated by special Act of Assembly of the Commonwealth of Pennsylvania, approved April 13, 1859 being Act No. 711, Laws of 1859, which granted to said company "exclusive authority to supply with gas light or water the Borough of Towanda and its vicinity in the County of Bradford and such persons, partnerships and corporations, residing therein as may desire the same * * *."

Said Towanda Electric Illuminating Company was incorporated on December 27, 1889, and received letters patent for the Borough of Towanda, Bradford County.

Your petitioner Northern Pennsylvania Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, the franchises and all of the property real, personal and mixed, of the following corporations, and received deeds therefor dated August 20, 1925, which were approved by your Honorable Commission at Application Docket Nos. 13607 to 13626, both inclusive of 1925, and were duly recorded in Bradford County, Pennsylvania:

(1) Monroeton Electric Company, which received letters patent dated July 12, 1921, for the Borough of Monroe, Bradford County.

(2) South Towanda Electric Company, which received [fol. 121] letters patent dated July 12, 1921, for the Township of Towanda, Bradford County.

(3) North Towanda Electric Company, which received letters patent dated July 12, 1921, for the Township of North Towanda, Bradford County.

(4) West Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of West Burlington, Bradford County.

(5) Ulster Township Electric Company, which received letters patent dated September 19, 1923, for the Township of Ulster, Bradford County.

(6) Rome Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Rome, Bradford County.

(7) Granville Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Granville, Bradford County.

(8) Wysox Electric Company, which received letters patent dated July 12, 1921, for the Township of Wysox, Bradford County.

(9) Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Burlington, Bradford County.

[fol. 122] (10) Orwell Township Electric Company, which received letters patent dated September 15, 1923, for the Township of Orwell, Bradford County.

(11) Sheshequin Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Sheshequin, Bradford County.

(12) Herrick Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Herrick, Bradford County.

(13) Franklin Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Franklin, Bradford County.

(14) Powell Electric Company, which received letters patent dated July 12, 1921, for the Township of Monroe, Bradford County.

(15) Asylum Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Asylum, Bradford County.

(16) Burlington Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Burlington, Bradford County.

(17) Rome Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Rome, Bradford County.

[fol. 123] (18) Smithfield Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Smithfield, Bradford County.

(19) Leroy Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Leroy, Bradford County.

(20) Standing Stone Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Standing Stone, Bradford County.

Your petitioner Northern Pennsylvania Power Company has an authorized capital stock of 2,500 shares of 6% Cumulative Preferred Stock, having a par value of $50 each, of which 2,089 shares were outstanding in the hands of the public and 148 shares were in the company's treasury on October 31, 1925; 50,000 shares of $7 Cumulative Preferred stock without nominal or par value, no part of which has been issued; 50,000 shares of $6 Cumulative Preferred stock without nominal or par value, no part of which has been issued; and 100,000 shares of common stock without nominal or par value, of which 2,160 shares were outstanding in the hands of the public on October 31, 1925.

Your petitioner Northern Pennsylvania Power Company has an authorized indebtedness of $10,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $50,000 principal amount of General First and Refunding 6% Gold Bonds of Towanda Gas [fol. 124] & Electric Company secured by mortgage to The Scranton Trust Company as Trustee dated October 1, 1921, of which $1,000 principal amount were in the company's treasury; and $1,000 principal amount of 5% First Mortgage Bonds of Towanda Electric Illuminating Company secured by mortgage to R. F. Page, Trustee, dated April 1, 1913.

6. General balance sheets of your petitioners as of October 31, 1925, and a statement of income and expenses

showing the results of the operations of your said petitioners during the year ending on October 31, 1925, are hereto attached, marked Exhibits "A", "B", "C" and "D".

7. A contract has been entered into under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, for the sale by your petitioner North Penn Power Company to your petitioner Northern Pennsylvania Power Company of all of its franchises and property, real, personal and mixed, subject to all its debts, liabilities and duties. The consideration named in said contract is to be paid to the selling company for its stockholders and is as follows:

$50 and accrued dividends in cash for each share of Series A 7% Cumulative Preferred stock of the selling company with the privilege of taking in lieu thereof one-half of a share of the $7 Cumulative Preferred stock of the purchasing company, with apportionment of dividends thereon.

$55 in cash for each share of Non-Cumulative Preferred stock, Series B, of the selling company with the privilege of [fol. 125] taking in lieu thereof one-half of a share of the $7 Cumulative Preferred stock of the purchasing company with apportionment of dividends thereon.

9121 shares of the Common stock of the purchasing company for all of the Common stock of the selling company, all the holders of the latter having consented thereto.

Said contract consists of resolutions of the respective Boards of Directors of your petitioners, copies whereof marked Exhibits "E" and "F" are hereto attached. The said contract has been duly approved and ratified by the stockholders of your petitioner, North Penn Power Company as more fully appears by the election return relative thereto heretofore duly filed in the office of the Secretary of the Commonwealth of Pennsylvania.

8. Said sale is desired by the parties hereto because the same interests own the entire common stocks of your petitioners and their respective systems being in the same general locality, it is believed that by interconnecting and operating them under one management, economies can be effected which will at once result in bettering the service and benefitting the consuming public.

9. It is expected that the proposed transaction will materially improve the service now rendered by the parties hereto. The consolidation should result in added financial

strength and in the assurance of adequate sources of supply of electric energy which are not always accessible to a small isolated company.

10. The price of the franchises and property to be purchased as aforesaid will, so far as the same is payable in [fol. 126] cash, be paid by your petitioner Northern Pennsylvania Power Company out of the sale of its bonds and/or stock.

11. The proposed transaction will grant no franchise rights to the purchaser to furnish service in any locality where similar service is being rendered by a public service company other than the selling company or, so far as your petitioners are informed and believe, where any such other company has charter rights to furnish service.

12. The proposed sale is necessary and proper for the service, accommodation and convenience of the public for the reasons stated in paragraphs 7 and 8 hereof.

Wherefore, your petitioners pray your Honorable Commission to issue a certificate of public convenience under the provisions of Article III, Section 3(c) and Article V, Sections 18 and 19 of the Public Service Company Law, evidencing its approval of the purchase by your petitioner, Northern Pennsylvania Power Company, of all of the franchises and property of your petitioner, North Penn Power Company, and they will ever pray, etc.

North Penn Power Company, by Lucien H. Tyng, Vice-President. Northern Pennsylvania Power Company, by Lucien H. Tyng, Vice-President.

[fol. 127] EXHIBIT "E" TO PETITION

Resolutions of Board of Directors of North Penn Power Company

Whereas, Northern Pennsylvania Power Company, a Pennsylvania corporation engaged in the same line of business as this company, has offered to purchase the franchises and all the property, real, personal and mixed, of this company, subject to all its debts, liabilities and duties for a consideration payable to this company for its stockholders in

cash and/or the capital stock of the purchasing company as follows, to wit:

For each share of Series A 7% Cumulative Preferred Capital Stock of this company issued and outstanding there shall be paid to this company for the holder's account $50 in cash, plus the amount of all accumulated and accrued and unpaid dividends (being the amount to which said stock is by the terms of its issuance entitled upon dissolution of the company or liquidation or sale of its assets); with the privilege of returning such cash payment of $50 to Northern Pennsylvania Power Company at any time within six months from date of its receipt by this company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of Northern Pennsylvania Power Company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For each share of Non-Cumulative Preferred Capital [fol. 128] Stock Series B of this company issued and outstanding there shall be paid to this company for the holders' account $55 in cash (being the amount to which said stock is by the terms of its issuance entitled in the event of dissolution or liquidation of its assets); with the privilege of returning such cash payment to Northern Pennsylvania Power Company at any time within six months from date of its receipt by this company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of Northern Pennsylvania Power Company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For all of the issued and outstanding shares of common capital stock of this company, to wit: 12,000 shares without nominal or par value, there shall be issued and delivered to this company for account of the holders of said common stock pro rata, 9121 shares of the common stock of Northern Pennsylvania Power Company without nominal or par value, when, as and if authorized by the stockholders thereof; and

Whereas, it seems desirable to this Board to sell the said franchises and property on the said terms,

Resolved, that the aforesaid offer of Northern Pennsylvania Power Company be and the same hereby is accepted.

Further Resolved, that, the stockholders of this company consenting, the President or Vice President and Secretary or an Assistant Secretary be and they are hereby [fol. 129] authorized and directed, upon the payment and delivery to this company of the aforesaid consideration, to make, execute and deliver a deed of the franchises, and all the property, real, personal and mixed, of the company to Northern Pennsylvania Power Company, its successors and assigns, as the act and deed of this company.

Further Resolved, that a meeting of the stockholders be called to convene at the office of the Company in Blossburg, Pennsylvania, on the 18th day of November, 1925, at 11 o'clock A. M., to take action on approval or disapproval of the proposed sale, assignment, disposition and conveyance of its franchises and all its property, real, personal and mixed, to Northern Pennsylvania Power Company.

EXHIBIT "F" TO PETITION

Resolutions of Board of Directors of Northern Pennsylvania Power Company

Whereas, in the judgment of this Board it is desirable that this company should acquire the franchises and all the property, real, personal and mixed, of North Penn Power Company, a Pennsylvania corporation, and the same are of a value at least equal to the proposed consideration hereinafter mentioned,

Resolved, that this company hereby offers to purchase said franchises and all the property, real, personal and mixed, of said North Penn Power Company, subject to all [fol. 130] its debts, liabilities and duties for a consideration payable to said company for its stockholders in cash and/or stock of this company as follows:

For each share of Series A 7% Cumulative Preferred Capital Stock of said North Penn Power Company issued and outstanding there shall be paid to said company for the holder's account $50 in cash, plus the amount of all accumulated and accrued and unpaid dividends (being the amount to which said stock is by the terms of its issuance

entitled upon dissolution of the company or liquidation or sale of its assets); with the privilege of returning such cash payment to this company at any time within six months from date of its receipt by said North Penn Power Company and receiving in lieu thereof one-half of a share of the $7 Cumulative Preferred Stock of this company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

For each share of Non-Cumulative Preferred Capital Stock Series B of said North Penn Power Company issued and outstanding there shall be paid to said company for the holder's account $55 in cash (being the amount to which said stock is by the terms of its issuance entitled in the event of dissolution or liquidation of its assets); ith the privilege of returning such cash payment to this company at any time within six months from date of its receipt by said North Penn Power Company and receiving in lieu thereof one-half of a share of the $7 Cumulative preferred stock of this company when, as and if authorized by the stockholders thereof, accrued dividends on such stock to be adjusted as of the date of the exchange.

[fol. 131] For all of the issued and outstanding shares of common capital stock of said North Penn Power Company, to wit: 12,000 shares, without nominal or par value, there shall be issued and delivered to said company for account of the holders of said common stock pro rata, 9121 shares of the common stock of this company without nominal or par value, when, as and if authorized by the stockholders thereof.

STATE OF NEW YORK,
County of New York, ss:

On this 25th day of November, 1925, before me, the subscriber, a notary public in and for the County of Queens, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn according to law, deposes and says that he is a Vice-President of North Penn Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of verification of the statements contained therein, and that the said state-

ments and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. William J. White, Notary Public, Queens County, Queens County Clerk's No. 3905. Certificate filed in New York County. Clerk's No. 97, Register's No. 7170. Commission expires March 30th, 1927. (Seal.)

[fol. 132] STATE OF NEW YORK,
County of New York, ss:

On this 25th day of November, 1925, before me, the subscriber, a notary public in and for the County of Queens, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn according to law, deposes and says that he is a Vice-President of Northern Pennsylvania Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of the verification of the statements contained therein, and that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. William J. White, Notary Public, Queens County. Queens County Clerk's No. 3905. Certificate filed in New York County. Clerk's No. 97, Register's No. 7170. Commission expires March 30th, 1927. (Seal.)

[fol. 133] PUBLIC SERVICE COMMISSION, COMMONWEALTH OF PENNSYLVANIA

In re Application of NORTH PENN POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

Petition

Cooke & Marvin, 31 Nassau Street, New York

Exhibit "B" to Stipulation of Facts

The Public Service Commission of the Commonwealth of Pennsylvania

State of Pennsylvania,
County of Dauphin, ss:

I, John G. Hopwood, Secretary of the Public Service Commission of the Commonwealth of Pennsylvania, do hereby certify that the papers hereto attached are true and correct copies of the report, order and certificate of public convenience issued by the Commission under date of June 8, 1926, in re: Application of the Susquehanna County Light & Power Company and Northern Pennsylvania Power Company for the approval of the sale of the franchises and property of the former to the latter company, as the same remain of record in the offices of the Commission at Application Docket No. 14271—1926.

[fol. 134] In Testimony Whereof, I have hereunto set my hand and caused the seal of the Commission to be affixed hereto this twenty-sixth day of June, 1926.

Jno. G. Hopwood, Secretary, The Public Service Commission of the Commonwealth of Pennsylvania. (Seal.)

The Public Service Commission of the Commonwealth of Pennsylvania

A. 14271—1926

In the Matter of the Application of Susquehanna County Light & Power Company and Northern Pennsylvania Power Company, under Section 3 (c), Article III, and Sections 18 and 19, Article V, of the Public Service Company Law, for the Approval of the Sale of the Franchises and Property of the Former to the Latter Company

Certificate of Public Convenience

The Public Service Commission of the Commonwealth of [fol. 135] Pennsylvania, hereby certifies that after an investigation and hearing had on the above entitled application, it has, by its report and order made and entered, a copy

of which is hereto attached and made a part hereof, found and determined that the granting of said application is necessary and proper for the service, accommodation, convenience and safety of the public, and this certificate is issued evidencing its approval of the said application as set forth in said report and order.

In Testimony Whereof, The Public Service Commission of the Commonwealth of Pennsylvania has caused these presents to be signed and sealed, and duly attested by its Secretary, at its office in the city of Harrisburg, this 8th day of June, 1926.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) Wm. D. B. Ainey, Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 136] THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 14271—1926

In re Application of the SUSQUEHANNA COUNTY LIGHT & POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for the Approval of the Sale of the Franchises and Property of the Former to the Latter Company

REPORT AND ORDER

By the COMMISSION:

This case being before the Commission upon petition of the Susquehanna County Light & Power Company and Northern Pennsylvania Power Company, dated March 17, 1926, for the approval of the sale of the franchises and property of the former to the latter company, as more fully described in and under the terms and conditions of deed executed by said Susquehanna County Light & Power Company, under date of March 17, 1926:

and having been duly heard and submitted by the parties, [fol. 137] and full investigation of the matters and things involved having been had, the Commission finds and determines that the granting of said petition is necessary and

proper for the service, accommodation, convenience and safety of the public, and that a certificate of Public Convenience be issued evidencing the Commission's approval thereof.

Now, to-wit, June 8, 1926, It is Ordered: That a Certificate of Public Convenience be issued evidencing the Commission's approval of the said sale in accordance with said deed hereto attached, as above determined.

The Public Service Commission of the Commonwealth of Pennsylvania, (Signed) Wm. D. B. Ainey, Chairman.

Attest: (Signed) Jno. G. Hopwood, Secretary. (Seal.)

[fol. 138] BEFORE THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

Application Docket No. 1926

In re Application of SUSQUEHANNA COUNTY LIGHT & POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

To the Public Service Commission of the Commonwealth of Pennsylvania:

The petition of Susquehanna County Light & Power Company and Northern Pennsylvania Power Company respectfully represents:

1. The names and addresses of your petitioners are as follows: Susquehanna County Light & Power Company, Borough of Susquehanna, Susquehanna County, Pennsylvania; Northern Pennsylvania Power Company, 207 Main Street, Borough of Towanda, Bradford County, Pennsylvania.

2. The name and address of your petitioners' attorney are Hedley V. Cooke, 31 Nassau Street, New York City

[fol. 139] 3. Except as otherwise stated each of the corporations hereinafter named was duly organized for the purpose of supplying light, heat and power by means of elec-

tricity in the borough, town, city or district in the Commonwealth of Pennsylvania in the particular case mentioned and to such persons, partnerships and corporations residing therein or adjacent thereto as might desire the same, under the Act of April 29th, 1874, P. L., 73 as amended by the Act of May 8th, 1889, P. L., 136 and the amendments thereof and supplements thereto, and received letters patent granting to it perpetual existence, the articles of association having been in each case duly recorded in the proper county.

4. Your petitioner, Susquehanna County Light & Power Company received letters patent dated December 8th, 1913 for Oakland Borough, Susquehanna County.

Your said petitioner thereafter acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17th, 1876, P. L., 30, the franchises and all of the property, real, personal and mixed of the following corporations:

(1) Susquehanna County Electric Company hereinafter called No. (2), pursuant to consent of stockholders given on December 15, 1913.

(2) Lanesboro Light & Power Co., which received letters [fol. 140] patent dated December 8th, 1913, for the Borough of Lanesboro, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(3) Great Bend Light & Power Co., which received letters patent dated December 8th, 1913, for the Borough of Great Bend, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(4) Oakland Township Light & Power Co., which received letters patent dated December 8th, 1913, for the Township of Oakland, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(5) Great Bend Township Light & Power Co., which received letters patent dated December 8th, 1913, for the Township of Great Bend, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(6) New Milford Township Light & Power Company, which received letters patent dated December 8th, 1913, for the Township of New Milford, County of Susquehanna, pur-

suant to consent of stockholders given on December 15th, 1913.

(7) Bridgewater Township Light & Power Company, which received letters patent dated December 8th, 1913, for the Township of Bridgewater, County of Susquehanna, pur-
[fol. 141] suant to consent of stockholders given on December 15th, 1913.

(8) New Milford Light & Power Company, which received letters patent dated December 8th, 1913, for the Borough of New Milford, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(9) Oakland Light & Power Co., which received letters patent dated December 30th, 1913, for the Borough of Montrose, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

(10) Montrose Electric Light Heat & Power Company which received letters patent dated March 23rd, 1897 for the Borough of Montrose, County of Susquehanna, pursuant to consent of stockholders given on December 15th, 1913.

Susquehanna County Electric Company No. (2) was duly organized under the Act of May 29th 1901, P. L. 349 and the amendments thereof and supplements thereto by merger and consolidation under agreement dated July 31st, 1902, of:

(1) Susquehanna County Electric Company No. (1) which received letters patent on July 28th, 1902, for Susquehanna Borough, Susquehanna County, Pennsylvania:

[fol. 142] (2) Union Electric Company, which received letters patent dated November 21st, 1894, for Hallstead Borough, said Susquehanna County, Pennsylvania.

Your petitioner, Susquehanna County Light & Power Company has an authorized capital stock of (a) 1150 shares of 7% Cumulative Preferred stock, of the par value of $100 each all of which has been issued and is outstanding; (b) 3000 shares of Common stock of the par value of $100 each all of which has been issued and is outstanding.

Your said petitioner has an authorized indebtedness of $600,000 against which there was outstanding on December 31, 1925, an actual funded debt consisting of $600,000 of Thirty Year 6% Gold Bonds due December 15th, 1943, se-

cured by a closed first mortgage dated December 15th, 1913, to Scranton Trust Company, as Trustee.

5. Your petitioner, Northern Pennsylvania Power Company, was duly organized under the provisions of the Act of May 3, 1909, P. L., 408 and the amendments thereof and supplements thereto by merger and consolidation under the name Towanda Gas & Electric Company, pursuant to agreement dated July 1, 1920 of Towanda Gas & Water Company and Towanda Electric Illuminating Company, which merger your Honorable Commission approved by the issuance of a certificate of public convenience at Application Docket No. 4205 of 1920. Thereafter your said petitioner by proceedings duly had pursuant to the statute in such case made [fol. 143] and provided changed its name to Northern Pennsylvania Power Company.

Said Towanda Gas & Water Company was incorporated by special Act of Assembly of the Commonwealth of Pennsylvania, approved April 13, 1859, being Act No. VII, Laws of 1859, which granted to said company "exclusive authority to supply with gas light or water the Borough of Towanda and its vicinity in the County of Bradford, and such persons, partnerships and corporations, residing therein as may desire the same • • •."

Said Towanda Electric Illuminating Company was incorporated on December 27, 1889, and received letters patent for the Borough of Towanda, Bradford County.

Your petitioner, Northern Pennsylvania Power Company heretofore acquired by purchase under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L., 30, the franchises and all of the property real, personal and mixed, of the following corporations, and received deeds therefor dated August 20, 1925, which were approved by your Honorable Commission at Application Docket Nos. 13607 to 13626, both inclusive of 1925, and were duly recorded in Bradford County, Pennsylvania:

(1) Monroeton Electric Company which received letters patent dated July 12, 1921, for the Borough of Monroe, Bradford County.

(2) South Towanda Electric Company, which received [fol. 144] letters patent dated July 12, 1921, for the Township of Towanda, Bradford County.

(3) North Towanda Electric Company, which received letters patent dated July 12, 1921, for the Township of North Towanda, Bradford County.

(4) West Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of West Burlington, Bradford County.

(5) Ulster Township Electric Company, which received letters patent dated September 19, 1923, for the Township of Ulster, Bradford County.

(6) Rome Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Rome, Bradford County.

(7) Granville Township Electric Company, which received letters patent September 11, 1923, for the Township of Granville, Bradford County.

(8) Wysox Electric Company, which received letters patent dated July 12, 1921 for the Township of Wysox, Bradford County.

(9) Burlington Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Burlington, Bradford County.

[fol. 145] (10) Orwell Township Electric Company, which received letters patent dated September 15, 1923, for the Township of Orwell, Bradford County.

(11) Sheshequin Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Sheshequin, Bradford County.

(12) Herrick Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Herrick, Bradford County.

(13) Franklin Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Franklin, Bradford County.

(14) Powell Electric Company, which received letters patent dated July 12, 1921, for the Township of Monroe, Bradford County.

(15) Asylum Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Asylum, Bradford County.

(16) Burlington Borough Electric Company, which received letters patent dated September 11, 1923, for the Borough of Burlington, Bradford County.

(17) Rome Township Electric Company, which received letters patent dated September 11, 1923, for the Township [fol. 146] of Rome, Bradford County.

(18) Smithfield Township Electric Company, which received letters patent dated September 19, 1923, for a portion of the Township of Smithfield, Bradford County.

(19) Leroy Township Electric Company, which received letters patent dated September 11, 1923, for the Township of Leroy, Bradford County.

(20) Standing Stone Township Electric Company, which received letters patent dated January 23, 1924, for the Township of Standing Stone, Bradford County.

(21) Towanda Gas Company which was incorporated for the purpose of manufacturing and supplying gas for heat and fuel to the public in the Borough of Towanda and received letters patent on October 22, 1925. Deed to Northern Pennsylvania Power Company, dated November 21, 1925, approved at Application Docket No. 13912 of 1925.

Your petitioner Northern Pennsylvania Power Company has an authorized capital stock of 2,500 shares of 6% Cumulative Preferred Stock, having a par value of $50 each, of which 2,089 shares were outstanding in the hands of the public and 148 shares were in the company's treasury on October 31, 1925; 50,000 shares of $7 Cumulative Preferred [fol. 147] stock without nominal or par value, no part of which has been issued; 50,000 shares of $6 Cumulative Preferred stock without nominal or par value, no part of which has been issued; and 100,000 shares of common stock without nominal or par value, of which 2,160 shares were outstanding in the hands of the public on October 31, 1925.

Your petitioner Northern Pennsylvania Power Company has an authorized indebtedness of $10,000,000, against which there was outstanding on October 31, 1925, an actual funded debt consisting of $50,000 principal amount of General First and Refunding 6% Gold Bonds of Towanda Gas & Electric Company secured by mortgage to The Scranton Trust Company as Trustee dated October 1, 1921, of which $1,000 principal amount were in the company's treasury.

6. General balance sheets of your petitioners as of December 31, 1925, and a statement of income and expenses showing the results of the operations of your said petitioners during the year ending on December 31, 1925, are hereto attached, marked Exhibits "A", "B", "C" and "D".

7. A contract has been entered into under the provisions of Section 23 of the General Corporation Act of 1874 as amended by Section 5 of the Act of April 17, 1876, P. L. 30, for the sale by your petitioner, Susquehanna County Light & Power Company to your petitioner, Northern Pennsylvania Power Company of all of its franchises and property, real, personal and mixed, subject to all its debts, liabilities [fol. 148] and duties. The consideration named in said contract is to be paid to the selling company for its stockholders and is as follows:

For all of the capital stock of the selling company, to wit 5000 shares each having a par value of $100, 1150 shares of the $7 Cumulative Preferred stock of the purchasing company without nominal or par value, accrued dividends thereon to be adjusted as of the date of the exchange; and 2095 shares of the common stock of the selling company without nominal or par value.

Said contract consists of resolutions of the respective board of directors of your petitioners, copies whereof marked Exhibits "E" and "F" are hereto attached. The said contract has been duly approved and ratified by the stockholders of your petitioner, Susquehanna County Light & Power Company, as more fully appears by the election return relative thereto heretofore filed in the office of the Secretary of the Commonwealth of Pennsylvania.

8. Said sale is desired by the parties hereto because, the same interests owing the entire common stocks and voting control of your petitioners, but as separate units, and their respective systems being adjacent to each other, it is believed that by physically inter-connecting and operating them from one general office, economies and co-ordination can be effected which will at once result in bettering the service and thus benefitting the consuming public.

9. It is expected that the proposed transaction will materially improve the service now rendered by your peti- [fol. 149] tioners. The consolidation should also result in added financial strength and in the assurance of adequate

sources of supply of electric energy which are not always available to companies of moderate size.

10. The price of the franchises and property to be purchased will as aforesaid be paid entirely in stock of the purchasing company with the consent of all of the stockholders of your petitioner, Susquehanna County Light & Power Company.

11. The proposed transaction will grant no franchise rights to the purchaser to furnish service in any locality where similar service is being rendered by a public service company other than the selling company, or, so far as your petitioners are informed and believe where any such other company has charter rights to furnish service.

12. The proposed sale is necessary and proper for the service, accommodation and convenience of the public for the reasons stated in paragraphs 7 and 8 hereof.

Wherefore, your petitioners pray your Honorable Commission to issue a certificate of public convenience under the provisions of Article III., Section 3(c) and Article V., Sections 18 and 19 of the Public Service Company Law, evidencing its approval of the purchase by your petitioner, Northern Pennsylvania Power Company, of all of the fran-[fol. 150] chises and property of your petitioner, Susquehanna County Light & Power Company, and they will ever pray, etc.

Susquehanna County Light & Power Company, by Lucien H. Tyng, President. Northern Pennsylvania Power Company, by Lucien H. Tyng, Vice-President.

EXHIBIT "A" TO PETITION

Northern Pennsylvani . Power Company

General Balance Sheet—December 31, 1925

Assets

Property		$456,182.36
Current and Working Assets:		
Cash	$17,509.24	
Notes and Accounts Receivable	14,117.39	

Materials and Supplies	15,382.61	
Miscellaneous	764.88	
		47,774.12
Undistributed Debit Items		13,332.74
Total		$517,289.22

[fol. 151] Liabilities

Capital Stock:		
Six Per Cent. Cumulative Preferred	$104,450.00	
Common	213,076.95	
		$317,526.95
Payments by Subscribers for Preferred Stock		777.50
Funded Debt:		
Towanda Gas & Electric Co. General First & Refunding Mortgage Bonds due Oct 1, 1961		49,000.00
Current Liabilities:		
Loans Payable	$36,500.00	
Accounts Payable	5,746.91	
Miscellaneous	1,043.30	
		43,290.21
Accrued Liabilities:		
Taxes	$5,216.74	
Miscellaneous	2,282.26	
		7,499.00
Reserves:		
Depreciation	$41,545.98	
Miscellaneous	132.83	
		41,678.81
Surplus		57,516.75
Total		$517,289.22

[fol. 152] EXHIBIT "B" TO PETITION

Northern Pennsylvania Power Company

Statement of Income and Profit and Loss Accounts For Year Ended December 31, 1925

Income Account

Operating Revenue		$113,427.41
Operating Expenses and Taxes:		
Operating Expenses	$65,032.88	
Taxes	5,689.45	
		70,722.33
Operating Income		$42,705.08
Other Income		44.68
Total Income		$42,749.76
Deductions from Income:		
Interest on Funded Debt	$4,742.50	
Miscellaneous	648.15	
		5,390.65
Net Income		$37,359.11

[fol. 153] Profit and Loss Account

Surplus, January 1, 1925	$22,266.13
Net Income (Transferred from Income Account)	37,359.11
Miscellaneous Credits	10,259.50
Total	$69,884.74
Deductions:	
Preferred Stock Dividends	$6,261.00
Miscellaneous	6,106.99
	12,367.99
Surplus, December 31, 1925	$57,516.75

Exhibit "C" to Petition

Susquehanna County Light and Power Company

General Balance Sheet—December 31, 1925

Assets

Property		$1,130,036.32
Current and Working Assets:		
Cash	$5,703.96	
Accounts Receivable	23,049.46	
Materials and Supplies	7,055.63	
Miscellaneous	2,102.39	
		37,911.44
Unamortized Discount and Expense		21,096.91
Undistributed Debit Items		5,872.62
Total		$1,194,917.29

[fol. 154]

Liabilities

Common Capital Stock		$300,000.00
Funded Debt:		
First Mortgage 30 Year 6% Gold Bonds due December 15, 1943		600,000.00
Current Liabilities:		
Loans Payable	$150,893.86	
Accounts Payable	12,000.66	
Consumers' Deposits	4,384.18	
Loans from Consumers Payable in Installments	7,293.49	
Miscellaneous	3,292.55	
		177,864.24
Accrued Liabilities:		
Taxes	$7,582.09	
Insurance	5,171.00	
Interest on Funded Debt	8,513.94	
Miscellaneous	716.56	
		21,983.59

Reserves:		
Depreciation	$43,551.74	
Miscellaneous	34.86	
		43,586.60
Surplus		51,482.86
Total		$1,194,917.29

[fol. 155] EXHIBITION "D" TO PETITION

Susquehanna County Light and Power Company

Statement of Income and Profit and Loss Accounts For Year Ended December 31, 1925

Income Account

Operating Revenue		$181,081.55
Operating Expenses and Taxes:		
Operating Expenses	$106,371.83	
Taxes	3,917.26	
		110,289.09
Operating Income		$70,792.46
Other Income		43.41
Total Income		$70,835.87
Deductions from Income:		
Interest on Funded Debt	$36,044.00	
Interest on Notes Payable	7,882.65	
Amortization of Discount and Expense	1,174.80	
Miscellaneous	287.42	
		45,388.87
Net Income		$25,447.00

[fol. 156] Profit and Loss Account

Surplus, January 1, 1925		$36,235.86
Net Income (Transferred from Income Account)		25,447.00
Miscellaneous Credit		1,000.00
Total		$62,682.86
Deductions:		
Depreciation	$10,000.00	
Miscellaneous	1,200.00	
		11,200.00
Surplus, December 31, 1925		$51,482.86

EXHIBIT "H" TO PETITION

Resolution of the Board of Directors of Northern Pennsylvania Power Company

Whereas, in the judgment of this Board it is desirable that this company should acquire the franchises and all the property, real, personal and mixed, of Susquehanna County Light & Power Company, a Pennsylvania corporation, and the same are of a value at least equal to the proposed consideration hereinafter mentioned,

Resolved, that this company hereby offers to purchase said franchise and all the property, real, personal and mixed, of said Susquehanna County Light & Power Com-
[fol. 157] pany, subject to all its debts, liabilities and duties for a consideration payable to said company for its stockholders in stock of this company as follows:

For all of the issued and outstanding shares of capital stock of said Susquehanna County Light & Power Company, to wit, 5,000 shares each having a par value of $100, there shall be issued and delivered to said company for account of the holders of said stock pro rata 1150 shares of the $7 Cumulative Preferred stock of this company without nominal or par value, accrued dividends on said stock to be adjusted as of the date of the exchange; and 2,095

shares of the common stock of this company without nominal or par value.

EXHIBIT "I" TO PETITION

Resolutions of the Board of Directors

Susquehanna County Light & Power Company

"Whereas, Northern Pennsylvania Power Company, a Pennsylvania corporation engaged in the same line of business as this company, has offered to purchase the franchises and all the property, real, personal and mixed, of this company, subject to all its debts, liabilities and duties for a consideration deliverable to this company for its stockholders in the capital stock of the purchasing company as follows, to wit:

"For all of the issued and outstanding shares of capital stock of this company, to wit: 5,000 shares each having a [fol. 158] par value of $100, there shall be issued and delivered to this company for account of the holders of said stock pro rata 1150 shares of the $7 Cumulative Preferred stock of Northern Pennsylvania Power Company without nominal or par value, accrued dividends on said stock to be adjusted as of the date of the exchange; and 2,095 shares of the common stock of Northern Pennsylvania Power Company without nominal or par value; and

"Whereas, it seems desirable to this Board to sell the said franchise and property on the said terms,

"Resolved, that the aforesaid offer of Northern Pennsylvania Power Company be and the same hereby is accepted.

"Further Resolved, that a meeting of the stockholders be called to convene at the office of the Company in the Borough of Susquehanna, Susquehanna County, Pennsylvania, on the 25th day of January, 1926, at 11 o'clock a. m., to take action on approval or disapproval of the proposed sale, assignment, disposition and conveyance of its franchises and all its property, real, personal and mixed, to Northern Pennsylvania Power Company, the holders of all of the capital stock of this company having waived all notice of such meeting."

STATE OF NEW YORK,
County of New York, ss:

On this 17 day of March, 1926, before me, the subscriber, a notary public in and for the County of Westchester, State [fol. 159] of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn, according to law, deposes and says that he is President of Susquehanna County Light & Power Company, one of the petitioners named in the foregoing petition, and as such charged with the duty of the verification of the statements contained therein, and that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. Helen O'Brien, Notary Public, Westchester Co. New York County Clerk's No. 150. New York Register's No. 6101. Commission expires March 30, 1926.

STATE OF NEW YORK,
County of New York, ss:

On this 17 day of March, 1926, before me, the subscriber, a notary public in and for the County of Westchester, State of New York, and duly authorized to act as such in the County of New York, said State, personally appeared L. H. Tyng, who, being duly sworn, according to law, deposes and says that he is a Vice President of Northern Pennsylvania Power Company, one of the petitioners named in the foregoing petition and, as such, charged with the duty of the [fol. 160] verification of the statements contained therein, and that the said statements and the exhibits attached thereto and made a part thereof, are true and correct.

Lucien H. Tyng.

Subscribed and sworn to before me the day aforesaid. Helen O'Brien, Notary Public, Westchester Co. New York County Clerk's No. 150. New York Register's No. 6101. Commission expires March 30, 1926.

THE PUBLIC SERVICE COMMISSION OF THE COMMONWEALTH OF PENNSYLVANIA

In re Application of SUSQUEHANNA COUNTY LIGHT & POWER COMPANY and NORTHERN PENNSYLVANIA POWER COMPANY for a Certificate of Public Convenience Evidencing the Commission's Approval of the Sale of the Franchises and Property of the Former to the Latter Company

Petition

Hedley V. Cooke, 31 Nassau Street, New York City

[fol. 161] BEFORE UNITED STATES BOARD OF TAX APPEALS

Docket Nos. 49,079, 52,639, 52,680, 59,469, 59,470

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

NEW JERSEY POWER & LIGHT COMPANY, as Successor by Merger to Newton Gas Company, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

BINGHAMTON LIGHT, HEAT & POWER COMPANY, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Francis J. Sweeney, Esq., for the Petitioners.
Chester A. Gwinn, Esq., for the Respondent.

MEMORANDUM OPINION

DISNEY:

These proceedings were duly consolidated for hearing and report and involve the redetermination of deficiencies [fol. 162] in income taxes as follows:

Petitioner	Docket No.	Year	Deficiency
General Gas & Electric Corporation	52639	1926	$90,169.05
	59469	1927	277,903.82
New Jersey Power & Light Co.	49079	1/1/26 to 12/1/26	478.70
Binghamton Light, Heat & Power Co.	52680	1926	34,826.71
	59470	1927	32,898.52

All of the facts have been stipulated.

The General Gas & Electric Company, a Delaware corporation, hereinafter referred to as the petitioner, is, and was at all times material, engaged in the business of holding securities and thus controlling public utility subsidiaries. The petitioners, with their affiliated taxpayers, filed consolidated income tax returns for 1926 and 1927. The affiliated taxpayers included the Susquehanna County Light & Power Co., formerly a Pennsylvania corporation; the North Carolina Public Service Co., Inc., a North Carolina corporation; the North Penn Power Co., formerly a Pennsylvania corporation; the Northern Pennsylvania Power Co., a Pennsylvania corporation; and the New Jersey Power and Light Co., a New Jersey corporation.

The North Penn Power Co. in 1923 issued and sold its First Mortgage Thirty Year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale. The bonds were redeemable at 105 per cent of their face amount or any interest date up to February 1, 1933.

In 1926 the Northern Pennsylvania Power Co., an affiliated subsidiary of the petitioner, acquired all of the assets and assumed all of the liabilities of the North Penn Power [fol. 163] Co., including its liability on these bonds, which constituted a prior lien on the assets taken over. The principal amount of the bonds outstanding at the time of the transfer was $552,700. Other consideration for the transfer was cash from the transferee for the retirement of the preferred stock of the transferor and common stock of the transferee, which was issued in exchange for common stock of the transferor.

Subsequently in 1926 the Northern Pennsylvania Power Co. retired $368,900 principal amount of the bonds at 105 per cent of their face value, or at a premium of $18,445, plus accrued interest to the date of retirement. In 1927 it retired the remaining bonds, $183,800 face amount, at the same price, or at a premium of $9,190.

On and after December 15, 1913, the Susquehanna County Light & Power Co. issued and sold $600,000 of its first mortgage 6 per cent gold bonds due December 15, 1943, incurring debt discount and expenses incident to the issue and sale. In 1926 the Northern Pennsylvania Power Co. acquired all of the assets and assumed all of the liabilities of the Susquehanna County Light & Power Co., including its liability on

all of these bonds, which constituted a prior lien on the assets transferred. Other consideration paid for the assets was preferred and common stock of the transferee, which was exchanged for common stock of the transferor. The Susquehanna County Light & Power Co. had no outstanding preferred stock. In 1926 the Northern Pennsylvania Power Co. redeemed all of the bonds at 105 per cent of their prin- [fol. 164] cipal amount, or at a premium of $30,000, in accordance with terms of the trust indenture.

The funds for the retirement of the North Penn Power Co. and the Susquehanna County Light & Power Co. bonds were obtained from the sale in 1926 of $1,950,000 principal amount of Northern Pennsylvania Power Co. first and refunding bonds, Series A, due June 1, 1956.

The unamortized debt discount and expense incurred by the North Penn Power Co. and the Susquehanna County Light & Power Co. in connection with the issuance and sale of the bonds was transferred as a deferred charge asset on the books of the transferee.

At the time of retirement in 1926 by the Northern Pennsylvania Power Co. of $368,900 principal amount of bonds issued by the North Penn Power Co. and $600,000 principal amount of bonds of the Susquehanna County Light & Power Co., the balance of the unamortized debt discount and expense applicable thereto were $70,499.79 and $20,509.51, respectively. The debt discount of $70,499.79 on the $552,700 North Penn Power Co. bonds retired in 1926 and 1927, together with the premium of $27,635 paid in the redemptions, was not taken as an expense on the books of the Northern Pennsylvania Power Co., but were transferred to debt discount and expense applicable to the refunding issue. Of the amount of $20,509.51 of unamortized debt discount and expense incurred in the issuance and sale of the Susquehanna County Light & Power Co. bonds, in 1926 the Northern Pennsylvania Power Co. deducted $587.40, leaving an unamortized amount of $19,922.11.

The transfers of assets and liabilities of the North Penn [fol. 165] Power Co. and the Susquehanna County Light & Power Co. to the Northern Pennsylvania Power Co. were made under the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the Laws of Pennsylvania, with the sanction and approval of the Public Service Commission of Pennsylvania under Section 3 (c) Article III and Sections 18 and 19, Article V of the Public Service Com-

pany Law with the issuance of a report, order and certificate of public convenience.

The Piedmont Power & Light Co., formerly a North Carolina corporation, in 1919 issued and sold its first mortgage 15 year Sinking Fund Gold 6% series bonds. In 1921 by supplemental indenture it provided for the issuance and sale of a 7 per cent series with the right to convert the 7 per cent series, at the holder's option, into the 6 per cent series upon payment by the corporation of an 8 per cent cash premium at conversion.

In 1924 the North Carolina Public Service Co., Inc., purchased the assets and assumed the liabilities of the Piedmont Power & Light Co., including the mortgage liability under the original and supplemental indenture. In 1925 and 1926 the North Carolina Public Service Co., Inc., incurred debt discount of $6,884.50 by paying an 8 per cent cash premium for the conversion of 7 per cent bonds into 6 per cent bonds. The unamortized portion of this amount in 1926 was $6,017.66.

On November 1, 1926, $183,700 of the 7 per cent bonds were retired at 105 and $184,100 of the 6 per cent bonds [fol. 166] were retired at 103, the premiums paid being $9,185 on the former and $5,523 on the latter. In addition thereto the North Carolina Public Service C ., Inc., paid legal and advertising expenses of $2,112.50 in connection with the redemption.

In 1924 the North Carolina Public Service Co., Inc., issued and sold its first lien and refunding gold 6½ per cent Series A bonds due February 1, 1944, callable on any interest date to and including February 1, 1929, at 107½. In 1926 it redeemed $880,000 (the whole amount outstanding) of the bonds at a premium of $66,000 pursuant to the terms of the indenture, and incurred and paid legal and advertising expenses of $1,846.79 in connection with the retirement. At the time the bonds were retired there existed unamortized debt expenses incurred in connection with the issuance and sale of said bonds in the amount of $16,157.30, of which the respondent amortized $747.79 in 1926, leaving $15,409.51 unamortized in 1926.

In 1924 the North Carolina Public Service Co., Inc., issued and sold its first lien and refunding mortgage 6 per cent gold bonds Series B, due May 1, 1954, callable on any interest date on 30 days notice up to and including November 1, 1928, at 105. In 1926 it redeemed $570,500 (the entire amount outstanding) of the bonds at 105 or at a premium of

$28,525. The unamortized discount and expense at the time of the retirement was $56,176.48, of which the respondent allowed $489.52 as a deduction in 1926, leaving a balance of $55,686.96.

The funds used by the North Carolina Public Service Co., Inc., for the redemption of the bonds issued by the Piedmont [fol. 167] Power & Light Co. and the bonds issued by it, were from the proceeds of sale of bonds up to October 1, 1926, in the principal amount of $3,125,000.

From 1916 to 1925, inclusive, the New Jersey Power & Light Co., a New Jersey corporation organized in 1915 issued and sold to the public its first mortgage 5 per cent gold bonds, due February 1, 1936, of the face amount of $2,689,000 for $2,315,635, or at a total discount of $373,365. In 1927 it retired all of the outstanding bonds, amounting to $2,087,000, at 105 in accordance with the terms of the indenture under which they were issued, thereby paying a premium of $104,350. The funds for the retirement of the bonds were obtained from the sale on December 29, 1926, of $6,000,000 principal amount of New Jersey Power & Light Co. 5 per cent first mortgage bonds due August 1, 1936. None of the bonds redeemed were held by corporations affiliated with the petitioners. At the time the bonds were redeemed the unamortized debt discount and expense incurred in connection with their issue amounted to $179,687.23, of which the respondent allowed $9,470.42 as amortization over the life of the new issue of bonds, leaving a balance of $170,216.81.

The parties to these proceedings have stipulated that there is no deficiency or overpayment of income tax in Docket No. 49,079, involving the New Jersey Power & Light Co. as successor by merger to the Newton Gas Co., and that there is a deficiency of $6,876.77 in income tax against the Binghamton Light, Heat & Power Co., Docket No. 52,680, for the period January 1, 1926, to April 30, 1926. Decisions will be entered accordingly.

[fol. 168] Appropriate agreements have been entered into under which the income tax liability of each of the petitioners for the taxable years is to be paid by the General Gas & Electric Corporation, the parent corporation. The stipulations of the parties settle all of the issues raised by the pleadings except the question of whether the several amounts shown above as unamortized debt discount and expense at the time the bonds were retired, less amounts allowed by the respondent, and premiums and legal and ad-

vertising expenses incurred in connection with the redemptions, are deductible from gross income of the respective corporations which retired the securities. The question involves items relating to bonds issued in the first instance by the redeeming corporation and securities of other corporations assumed by the redeeming corporation.

Bonds of Redeeming Corporation

Under this subdivision of the issue, the following amounts are claimed as deductions from gross income of the corporations which issued and redeemed the bonds:

		Bonds	Premiums	Retirement Expense	Unamortized debt Discount & Expense
North Carolina Public Service Co., Inc.....	1926	$880,000	$66,000	$1,846.79	$15,409.51
	"	570,500	28,525		55,686.96
New Jersey Power & Light Co.....	1927	2,087,000	104,350		170,216.81

The respondent elected not to argue the question in view of the holdings of this Board and the courts contrary to the position he has taken. The deductibility of the premiums and unamortized debt discount is controlled by Metropolitan Edison Co., 35 B. T. A. (No. 143), and the cases cited therein on the first question, and the expense incurred in [fol. 169] retiring the bonds is ruled by Coast Counties Gas & Electric Co., 33 B. T. A. 1199. Following those cases the claimed deductions are allowed.

Bonds Assumed by Redeeming Corporations

This point involves the deduction of premiums, retirement expense and unamortized debt discount and expense relating to bonds of the North Penn Power Co. and the Susquehanna County Light & Power Co. assumed and subsequently redeemed by the Northern Pennsylvania Power Co. and bonds issued by the Piedmont Power & Light Co. which were assumed and retired by the North Carolina Public Service Co., Inc., as follows:

Northern Pennsylvania Power Co.:		Bonds	Premiums	Retirement Expense	Unamortized Debt Discount and Expense
North Penn Co. bonds..	1926	$368,900	$18,445		$47,058.08
	1927	183,800	9,190		23,441.71
Susquehanna Co. bonds.	1926	600,000	30,000		19,922.11
North Carolina Public Service Co., Inc.:					
Piedmont Co. bonds....	1926 7%	183,700	9,185)	2,112.50	6,017.66
	6%	184,100	5,523)		

The right to deduct the premiums paid to retire the bonds is decided in favor of the petitioner on the authority of our decision on the third issue in Metropolitan Edison Co., supra. The deductibility of the retirement expense of $2,112.50 and unamortized debt discount and expense of $6,017.66 incurred in the conversion of 7% bonds into 6% bonds is also decided in favor of the petitioner on the authority of Coast Counties Gas & Electric Co., supra, and our decision on the first issue in Metropolitan Edison Co., supra. [fol. 170] There remains the question of whether a right exists to deduct the unamortized debt discount and expense involved in the bonds assumed by the Northern Pennsylvania Power Co. The issue turns upon the true nature of the transactions.

The transfers were made under the provisions of Section 23 of the General Corporation Act of April 29, 1874, as amended on April 17, 1876, and are classified by the petitioner as the short form of merger under the laws of Pennsylvania. In the transaction with the North Penn Power Co. sufficient cash passed to retire the preferred stock of the transferor, and common stock of the transferee was exchanged for like stock of the transferor. In the deal with the Susquehanna County Light & Power Co. the transferee exchanged its preferred and common stock for the outstanding stock (common only) of the transferor. The transactions were referred to as sales in the resolutions adopted by the boards of directors of the corporations involved and the applications filed with the Public Service Commission of Pennsylvania under the Act, and they were approved by the Public Service Commission as sales.

Facts in all material respects the same, and the identical statutes of Pennsylvania, were involved in the first point in issue V of the Metropolitan Edison Co. case and we hold that the transactions were, in effect, sales, not statutory mergers. On the authority of that decision the respondent is sustained on this point.

Decision will be entered under Rule 50.

Enter:

——.

Entered June 3, 1937.

[fol. 171] BEFORE UNITED STATES BOARD OF TAX APPEALS, WASHINGTON

Docket No. 52,639

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

DECISION

Pursuant to the Memorandum Opinion of the Board entered on June 3, 1937, the respondent herein having on August 13, 1937, filed a motion together with a proposed recomputation and the petitioner having on August 20, 1937, acquiesced therein, now, therefore, it is

Ordered and Decreed: That there is a deficiency in income tax for the year 1926 in the amount of $24.21.

Enter.

Entered Aug. 24, 1937.

(S.) Bolon B. Turner, Member.

[fol. 172] IN UNITED STATES CIRCUIT COURT OF APPEALS, FOR THE SECOND CIRCUIT

[Title omitted]

PETITION FOR REVIEW—Filed November 20, 1937

To the Honorable the Judges of the United States Circuit Court of Appeals for the Second Circuit:

Now comes the appellant (hereinafter referred to as petitioner), the General Gas and Electric Corporation, a corporation organized and existing under the laws of the State of Delaware, by its undersigned attorneys and respectfully shows:

I. Jurisdiction for Review

This is a proceeding for review by the United States Circuit Court of Appeals for the Second Circuit of the decision of the United States Board of Tax Appeals entered August 24, 1937, Docket No. 52,639, determining a deficiency in income tax of the petitioner for the year 1926.

[fol. 173] The petitioner is a corporation duly organized and existing under the laws of Delaware, with its principal office and place of business in Wilmington, Delaware.

The respondent on review (hereinafter sometimes referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States of America.

The return of the tax in respect of which the asserted liability arises was filed with the United States Collector of Internal Revenue for the Second District of New York, whose office is located within the Judicial Circuit of the United States Circuit Court of Appeals for the Second Circuit.

Review of the said decision of the Board of Tax Appeals is sought by the petitioner in the United States Circuit Court of Appeals for the Second Circuit.

II. The Nature of the Controversy

The respondent determined against the petitioner for the taxable periods under review deficiencies in income tax for the calendar year 1926 in the amount of $90,169.05 and for the calendar year 1927 in the amount of $277,903.82 and duly sent to petitioner notice of said deficiencies. Thereafter, petitioner duly filed its petition for the redetermination of the said asserted deficiencies with the United States Board of Tax Appeals (hereinafter referred to as the "Board"). The respondent duly filed his answer to said petition and trial was had. On June 3, 1927, the Board [fol. 174] promulgated its report and opinion, and on August 24, 1937, entered its order redetermining the deficiencies, and deciding that there was a deficiency in the amount of $24.21 for 1926 and a deficiency of $3,164.80 for 1927.

III. The Matter in Controversy

The matter for decision in this controversy is whether the petitioner is entitled to deduct in a consolidated return duly filed with the Northern Pennsylvania Power Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and other corporations, the unamortized debt discount and expense remaining after the retirement by the Northern Pennsylvania Power Company of the bonds of the North Penn Power Company and the

Susquehanna County Light and Power Company. By agreement pursuant to law, the petitioner and each of the affiliated corporations agreed that the entire tax liability of the affiliated group of corporations is to be assessed against and paid by petitioner, the General Gas and Electric Corporation.

The petitioner maintains that in the consolidated returns it was entitled to the deduction with respect to said unamortized discount and expense. The respondent takes the position that the Northern Pennsylvania Power Company, a wholly owned subsidiary of the petitioner acquired the bonds of North Penn Power Company and Susquehanna County Light and Power Company by purchase and is not entitled to deduct such bond discount and expenses.

[fol. 175] In support of this petition, it is the petitioner's position that the Northern Pennsylvania Power Company acquired the bonds through merger and assumed the obligations therefor by virtue of the operation of law pursuant to Section 23 of the General Corporation Act of Pennsylvania of April 29, 1874, as amended April 17, 1876, under what is herein designated as a short form merger.

The Board of Tax Appeals held that the bonds came into the possession and ownership of the Northern Pennsylvania Power Company by virtue of purchase, the Board apparently assuming that if they had been acquired as the result of statutory merger the petitioner would be entitled to the deductions claimed.

The North Penn Power Company in 1923 issued and sold its First Mortgage 30-Year 6% Sinking Fund Gold Bonds due February 1, 1953, at a discount and also incurred expenses of issue and sale of the bonds. In 1926, the Northern Pennsylvania Power Company, an affiliated subsidiary of the petitioner, acquired all of the assets, property and franchises and assumed all of the liabilities of the North Penn Power Company, including its liability on these bonds which constituted a prior lien on the assets taken over, pursuant to and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the laws of the Commonwealth of Pennsylvania, with the sanction and approval of the Public Service Commission.

In 1926 the Northern Pennsylvania Power Company retired $368,900 principal amount of said bonds and in 1927 $183,800, principal amount thereof.

[fol. 176] The unamortized debt discount and expense with respect to the bonds retired in 1926 was $47,058.08 and with respect to those retired in 1927 the unamortized debt discount and expense was $23,441.71. Those amounts petitioner claims should be allowed as a deduction to the Northern Pennsylvania Power Company and allowed as a deduction in the consolidated return.

In 1926 the Northern Pennsylvania Power Company also acquired under, pursuant to and by virtue of the provisions of Section 23 of the General Corporation Act of 1874, as amended by Section 5 of the Act of April 17, 1876, P. L. 30 of the laws of the Commonwealth of Pennsylvania, with the approval and sanction of the Public Service Commission all the assets and assumed all the liabilities of the Susquehanna County Light and Power Company including the liability of the first mortgage bonds issued by the latter company which constituted a prior lien upon the assets so transferred. The Susquehanna County Light and Power Company was organized under the laws of Pennsylvania in 1913 as a public utility. On and after that date the said company issued and sold $600,000 of its first mortgage 6% gold bonds due December 15, 1943, incurring debt discount and expense incident to such issue and sale. In 1926 the Northern Pennsylvania Power Company redeemed the entire issue of the said bonds and retired the same. At the date of redemption there remained $19,922.11 unamortized debt discount and expense with respect to the issuance and sale of the bonds of the Susquehanna County Light and Power Company. Petitioner herein claims a right to deduct in the consolidated return from the gross income of the [fol. 177] Northern Pennsylvania Power Company for 1926 the said unamortized debt discount and expense.

Petitioner's contention is that under the law of Pennsylvania the assets of the North Penn Power Company and Susquehanna County Light and Power Company were acquired, and their liabilities assumed by operation of law, as a result of a merger under the aforementioned statute which is commonly known as the short form merger under the laws of Pennsylvania.

IV. Findings of the Board

All of the facts in the case either being stipulated or admitted in the answer or shown in the exhibits duly filed and attached to the stipulation, the Board made no independent

findings of fact, but adopted the facts there shown. The Board, however, reached the ultimate conclusion that the assets of the North Penn Power Company and the Susquehanna County Light and Power Company were acquired by the Northern Pennsylvania Power Company through purchase and sale and not as the result of a merger under the laws of Pennsylvania. Based upon this ultimate finding the Board decided that the Northern Pennsylvania Power Company was not entitled to the deduction with respect to the unamortized debt discount and expense upon the retirement of the assumed bonds.

V. Assignment of Error

The petitioner says that, in the decision and order of the Board redetermining the said deficiencies, manifest error [fol. 178] occurred and intervened to the prejudice of the petitioner and the petitioner assigns the following errors upon which it relies to reverse the said decision and order so rendered and entered by the Board, each and every assignment of error being severally and distributively applicable to the deficiency determined, decided and adjudicated against petitioner for the taxable years 1926 and 1927, viz.:

(1) The Board erred in failing to decide as a matter of law that the assets of the Susquehanna County Light and Power Company and the North Penn Power Company were acquired by the Northern Pennsylvania Power Company as a result of merger under the laws of Pennsylvania.

(2) The Board erred in holding that the petitioner was not entitled to the deduction claimed with respect to the unamortized debt discount and expense with respect to bonds of the North Penn Power Company and the Susquehanna County Light and Power Company assumed by it.

(3) The Board erred in determining that there were any deficiencies due from the petitioner for the taxable periods involved.

(4) The Board erred in not determining that there were overpayments of taxes for the periods involved.

Wherefore, the petitioner prays that the decision and order of the United States Board of Tax Appeals be reversed by the United States Circuit Court of Appeals for

the Second Circuit; that a transcript of the record be prepared in accordance with law and the rules of the said Circuit Court of Appeals be submitted to the Clerk of the said [fol. 179] Court for filing and that appropriate action be taken to the end that the decision complained of be reviewed and the errors complained of be corrected and the said decision be reversed by said court.

Respectfully submitted, Charles M. Trammell, Bradford S. Magill, Francis J. Sweeney, Attorneys for Petitioner.

Duly sworn to by Charles M. Trammell. Jurat omitted in printing.

[fol. 180] In United States Circuit Court of Appeals for the Second Circuit

[Title omitted]

Notice of Filing Petition for Review—Filed November 20, 1937

To the Chief Counsel, Bureau of Internal Revenue, United States Treasury Department:

You are hereby notified that on the 20th day of November, 1937, appellant, General Gas & Electric Corporation, did file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Second Circuit, of the decision of the Board of Tax Appeals heretofore rendered in the above entitled case. A copy of the petition for review and assignments of error, as filed, is attached hereto and served upon you.

Dated this 20th day of November, 1937.

C. M. Trammell, Attorney for Appellant.

[fol. 181] Copy of the foregoing notice, together with copy of the petition for review has been received this 20th day of November, 1937, and service thereof is hereby accepted.

J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue.

In United States Circuit Court of Appeals for the Second Circuit

[Title omitted]

Praecipe for Record—Filed November 20, 1937

To the Clerk of the United States Board of Tax Appeals:

You will please prepare within sixty (60) days from the date of the filing of the petition for review in the above-[fol. 182] entitled proceeding, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Second Circuit copies duly certified as correct, of the following documents:

1. Docket entries of proceedings before the Board of Tax Appeals.
2. Pleadings before the Board, including copy of notice of deficiency attached to petition.
3. Stipulation of facts filed with the Board of Tax Appeals, together with exhibits attached thereto and made a part thereof.
4. Opinion and decision of the Board.
5. Petition for review and assignments of error, together with proof of service of notice of filing petition for review and assignments of error.
6. This praecipe, together with proof of service thereof.

C. M. Trammell, Attorney for Petitioner.

Service of a copy of the within praecipe is hereby admitted this — day of November, 1937.

J. P. Wenchel, Attorney for Respondent on Review

[fol. 183] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 184] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT, OCTOBER TERM, 1937

Argued May 12, 1938. Decided July 18, 1938

Nos. 221, 222

GENERAL GAS & ELECTRIC CORPORATION, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from Board of Tax Appeals

Before Manton, Swan, and Chase, Circuit Judges

Petitions by General Gas & Electric Corporation to review orders of the Board of Tax Appeals determining deficiencies in income taxes for the years 1926 and 1927.

Affirmed.

William H. S. Wells, of Philadelphia, Pa., Francis J. Sweeney and C. M. Trammell, both of Washington, D. C., and Maurice Bower Saul of Philadelphia, Pa. (Saul, Ewing, Remick & Saul, of Philadelphia, Pa., of counsel), for petitioner.

James W. Morris, Asst. Atty. Gen. (Sewall Key and Lee A. Jackson, Sp. Assts. to Atty. Gen., of counsel), for respondent.

SWAN, Circuit Judge:

Two proceedings, one involving income taxes for the year 1926, the other for 1927, and presenting a common question of law, were consolidated for hearing before the Board. The petitions for review have been similarly consolidated before this court. The petitioner, General Gas & Electric Corporation, has agreed to pay the taxes — its affiliate, Northern Pennsylvania Power Company. The issue in controversy is as to the latter's taxes for the years 1926 and 1927, and this turns on whether it is entitled to deduct the unamortized bond discount and expense of two corporations whose assets and liabilities were taken over by it and whose bonds it retired before maturity during the

years in question. The commissioner disallowed the deductions, and the Board sustained his ruling.

There is no dispute in the facts, which were stipulated. In 1923 North Penn Power Company, a Pennsylvania corporation, issued and sold its first mortgage bonds, due February 1, 1953, at a discount and incurred expense in connection with their issue and sale. In 1926 it transferred all its assets, property and franchises to Northern Pennsylvania Power Company, also a corporation of Pennsylvania, and that company assumed all the liabilities of the transferor, including liability on the aforesaid bonds which constituted a prior lien on the assets transferred. As consideration for the transfer, the transferee, in addition to assuming the transferor's liabilities, gave cash for retirement of the transferor's preferred stock, and shares of the transferee's common stock, which were exchanged for the common stock of the transferor. The transfer was made under section 23 of the Pennsylvania General Corporation Act of 1874, as amended by section 5 of the Act of April 17, 1876, 15 P. S. Pa. § 595, and it had the sanction and approval of the Public Service Commission of Pennsylvania. At the date of the transfer there were outstanding first mortgage bonds of the transferor in the principal amount of $552,700. In 1926 the transferee retired $368,900 of these bonds, and in 1927 retired the remaining $183,800 thereof. By transactions similar in all material respects Northern Pennsylvania Power Company likewise acquired the assets and assumed the liabilities of another Pennsylvania corporation, Susquehanna County Light & Power Company, which [fol. 185] had outstanding an issue of first mortgage bonds that the transferee retired in 1926. The funds for the retirement of the North Penn bonds and the Susquehanna bonds were obtained from the proceeds of the sale of $1,950,000 of First and Refunding Bonds, Series A, due June 1, 1956, of Northern Pennsylvania Power Company. The unamortized bond discount and expense incurred respectively by North Penn Power Company and Susquehanna County Light & Power Company in connection with the issuance and sale of their bonds were transferred as a deferred charge asset on the books of Northern Pennsylvania Power Company. Such discount and expense in respect to the bonds retired in 1926 and 1927, respectively, were claimed as deductions in the consolidated income tax

returns filed by the petitioner and its affiliates for those years.

It is conceded that unamortized discount and expenses incurred in connection with the issue and sale of bonds are deductions available to the issuing corporation when it pays them off prior to maturity. See Helvering v. Union Pacific R. Co., 293 U. S. 282, 55 S. Ct. 165, 79 L. Ed. 363; Great Western Power Co. v. Commissioner, 297 U. S. 543, 56 S. Ct. 576, 80 L. Ed. 853. It is also not disputed that such items are allowable deductions to a successor corporation which through merger or consolidation has carried forward the corporate identity of the issuing corporation and has succeeded by operation of law to its rights and liabilities. American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527; New York Central R. Co. v. Commissioner, 2 Cir., 79 F. 2d. 247, certiorari denied 296 U. S. 653, 56 S. Ct. 370, 80 L. Ed. 465; Western Maryland Ry. Co. v. Commissioner, 4 Cir., 33 F. 2d 695. When, however, the successor corporation acquires the assets of the issuing corporation by purchase, rather than by a consolidation or merger, such deductions are not available. American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527; American Gas & Elec. Co. v. United States, 17 F. Supp. 151, Ct. Cl.; Turner-Farber-Love Co. v. Helvering, 62 App. D. C. 369, 68 F. 2d 416. Whether the transactions at bar are to be classed as mergers or as purchases is the issue in controversy.

The solution of the problem must be sought in the law of Pennsylvania. During 1926, when the transfers under consideration were made, the Pennsylvania statutes authorized two forms of transactions by which the assets and franchises of one corporation might be taken over by another. One statute is the Act of May 3, 1909, 15 P. S. Pa. § 421 et seq., sometimes referred to as the "long form merger"; the other is section 23 of the Act of April 29, 1874, as amended by section 5 of the Act of April 17, 1876, which is sometimes called the "short form merger." See York Haven Water & Power Co. v. Public Service Comm., 287 Pa. 241, 246, 134 A. 419. The transfers by which the taxpayer acquired the assets of its transferors and assumed their liabilities were made under the Act of 1874 as amended 15 P. S. Pa. § 595. This provides, so far as material:

"* * * and it shall be lawful for any corporation * * * to sell, assign, dispose of and convey to any cor-

poration created under or accepting the provisions of this act, its franchises, and all its property, real, personal and mixed, and thereafter such corporation shall cease to exist, and the said property and franchises not inconsistent with this act, shall thereafter be vested in the corporation so purchasing as aforesaid: * * *"

It will be observed that the statute speaks in terms of a sale rather than of a merger. It is true that it is provided that the selling corporation "shall cease to exist"; but this has been construed to refer primarily to a cessation of carrying on the business for which the corporation was created. See Merwine v. Mt. Pocono Light & Imp. Co., 304 Pa. 517, 521, 156 A. 150. It will also be observed that nothing is said as to the liability of the transferee for the debts of the transferor. In the case at bar assumption of liability was accomplished by contract; in the absence of a contractual assumption of debts it would seem that creditors of the transferor could hold the transferee liable only on principles of fraudulent conveyance and to the extent of the value of the assets received. See Merwine v. Mt. Pocono Light & Imp. Co., supra, at page 525, 156 A. 150. In several cases transfers made pursuant to this act have been referred to as purchases and sales. See Greensburg Borough v. Westmoreland Water Co., 240 Pa. 481, 485, 87 A. [fol. 186] 995; Koehler v. St. Mary's Brewing Co., 228 Pa. 648, 653, 77 A. 1016, 139 Am. St. Rep. 1024; Carr v. Rochester Tumbler Co., 207 Pa. 392, 395, 56 A. 945. In other cases, the language of the opinions seems to indicate that a transfer under the 1874 Act is regarded as effecting a merger. Pennsylvania Utilities Co. v. Public Service Comm., 69 Pa. Super. 612, 615; York Haven Water & Power Co. v. Public Service Comm., 287 Pa. 241, 246, 134 A. 419. Such characterizations are not conclusive of the present issue. In American Gas & Elec. Co. v. Commissioner, 2 Cir., 85 F. 2d 527, this court stated as an essential of such a merger as would entitle the successor corporation to claim deductions of the unamortized bond discount and expense of the merged corporation, that the successor must by operation of law become responsible for the liabilities of the merged corporation. A provision imposing such liability is certainly customary in technical merger statutes; such liability is expressly provided in the "long form merger" Act of

1909, as it is also in the Act of May 5, 1933, 15 P. S. Pa. § 2851—801 et seq. The absence of such a provision in the Act of 1874, and the construction placed upon that statute in Merwine v. Mt. Pocono Light & Imp. Co., 304 Pa. 517, 156 A. 150, seem to us fatal to the taxpayer's contentions. In that case the plaintiff, a creditor of the selling corporation, moved to substitute the purchasing corporation as a party defendant in an action pending against the seller. The denial of that motion, affirmed by the Supreme Court, shows that under the Act of 1874, the purchasing corporation does not succeed, simply by operation of law, to the liabilities of the seller. Accordingly, we think the case at bar is governed by our decision in American Gas & Elec. Co. v. Commissioner, supra.

Order affirmed.

[fol. 192] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
against
COMMISSIONER OF INTERNAL REVENUE, Respondent

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
against
COMMISSIONER OF INTERNAL REVENUE, Respondent

Before Manton, Swan and Chase, Circuit Judges

Gerald J. Dean, William H. S. Wells, Francis J. Sweeney, C. M. Trammell, Maurice Bower Saul, Attorneys for Petitioner. Saul Ewing, Remick & Saul, of Counsel.

Per CURIAM:

Petitions for rehearing denied.

M. T. M., T. W. S., H. B. C., Circuit Judges.

Filed September 1, 1938.

[fol. 193] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 1st day of September, one thousand nine hundred and thirty-eight.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,
vs.
COMMISSIONER OF INTERNAL REVENUE, Respondent

(And Another Case)

A petition for a rehearing having been filed herein by counsel for the petitioner;

Upon consideration thereof, it is

Ordered that said petition be and hereby is denied.

Wm. Parkin, Clerk.

[fol. 194] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. General Gas and Electric Corpn. vs. Commissioner of Internal Revenue. Order. United States Circuit Court of Appeals, Second Circuit. Filed Sep. 1, 1938. William Parkin, Clerk.

[fol. 195] UNITED STATES CIRCUIT COURT OF APPEALS, SECOND CIRCUIT

At a stated term of the United States Circuit Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 1st day of September, one thousand nine hundred and thirty-eight.

Present: Hon. Martin T. Manton, Hon. Thomas W. Swan, Hon. Harrie B. Chase, Circuit Judges.

No. 221

GENERAL GAS AND ELECTRIC CORPORATION, Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

Appeal from the United States Board of Tax Appeals

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On Consideration Whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be and it hereby is affirmed.

It is further ordered that a mandate issue to the said Board in accordance with this decree.

Wm. Parkin, Clerk, by D. E. Roberts, Deputy Clerk.

[fol. 196] [Endorsed:] United States Circuit Court of Appeals, Second Circuit. General Gas & Electric Corpn. vs. Commissioner of Internal Revenue. (No. 221.) Order for mandate. United States Circuit Court of Appeals, Second Circuit. Filed Sep. 1, 1938. William Parkin, Clerk.

[fol. 197] UNITED STATES OF AMERICA,
Southern District of New York:

I, William Parkin, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 196, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of General Gas & Electric Corporation, Petitioner, against Commissioner of Internal Revenue, Respondent, as the same remain of record and on file in my office.

In Testimony Whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this thirtieth day of November, in the year of our Lord one thousand nine hundred and thirty-eight, and of the Independence of the said United States the one hundred and sixty-third.

Wm. Parkin, Clerk. (Seal United States Circuit Court of Appeals, Second Circuit.)

[fol. 198] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 3, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted, and the case is assigned for argument immediately following the hearing of Nos. 486 and 487.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.